DOCUMENT RESUME

ED 413 251 SO 026 609

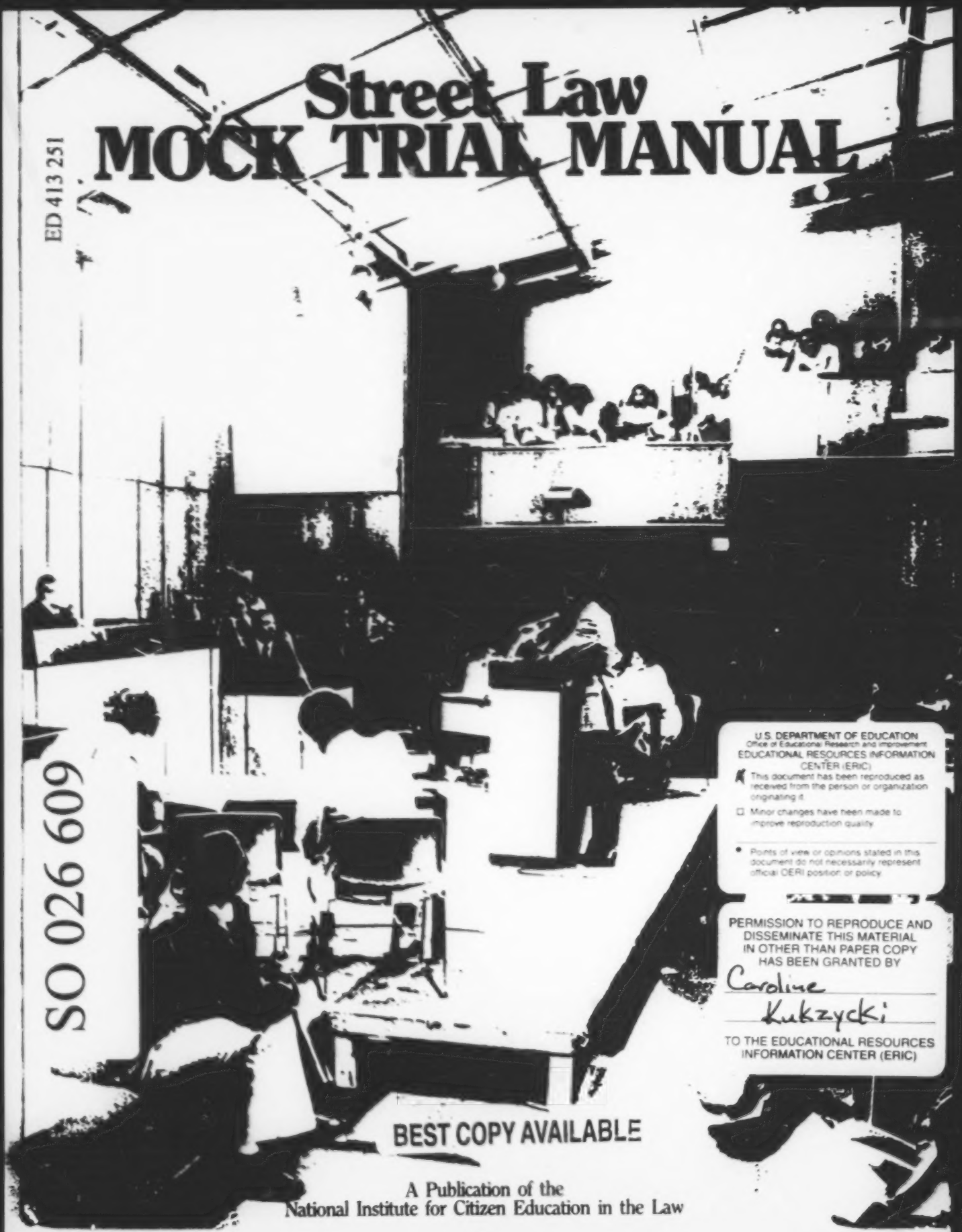
AUTHOR	McGuire, Patricia, Ed.; O'Brien, Edward L.; Arbetman, Lee; Mills, Vivian H.; Pannell, Andrew
TITLE	Street Law Mock Trial Manual.
INSTITUTION	National Inst. for Citizen Education in the Law, Washington, DC.
PUB DATE	1984-00-00
NOTE	62p.
AVAILABLE FROM	Social Studies School Service, 10200 Jefferson Boulevard, Culver City, CA 90232 ($12.95, Z-33).
PUB TYPE	Guides - Classroom - Teacher (052)
EDRS PRICE	EDRS Price MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	*Citizenship Education; Civil Law; Court Litigation; Criminal Law; Elementary Secondary Education; Evidence (Legal); Instructional Materials; *Law Related Education; Laws; Legal Problems; Social Studies; Teaching Guides; Teaching Methods
IDENTIFIERS	*Mock Trials; *Street Law

ABSTRACT

Designed to facilitate the expanded use of mock trials, this manual is divided into two principle sections--a teacher's guide and a student's guide. The teacher's guide contains specific advice to teachers on all aspects of preparing for a mock trial and seven specific lesson plans for a 2- to 3-week mock trial unit. Each lesson contains objectives and student activities. The student's guide includes three sections: (1) the trial process; (2) steps in a trial; (3) simplified rules of evidence. In conjunction with the manual, teachers should employ at least one set of case materials that include a statement of facts, four witness affidavits, and pieces of evidence. The manual concludes with six sets of case materials focusing on freedom of the press, criminal law (theft), child custody, contract dispute (consumer home repair), and small claims court (auto accident). (TSV)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

Street Law
MOCK TRIAL MANUAL



ED 413 251

SO 026 609

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☒ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN OTHER THAN PAPER COPY HAS BEEN GRANTED BY

Caroline Kukzycki

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

BEST COPY AVAILABLE

A Publication of the
National Institute for Citizen Education in the Law

Street Law Mock Trial Manual

Edited by
Patricia McGuire, Esquire
Georgetown University Law Center

With assistance from
Edward L. O'Brien
Lee Arbetman
Vivian H. Mills
Andrew Pannell

A Publication of the National Institute for Citizen Education in the Law
711 G Street SE
Washington DC 20003
(202) 546-6644

Published and Distributed by Social Studies School Service, 10200 Jefferson Boulevard, Culver City, California 90232

Editor's Foreword

In presenting this manual, the Institute would be only too glad to credit every individual by name for the ideas and methods contained within. The fact is, however, that this is an impossibility. Over the years, throughout the law-related education community, large numbers of innovators and practitioners have contributed to the creation of the mock trial in its present form. The list includes teachers, administrators, curriculum specialists, classroom volunteers, law school clinicians, law students, and the high school students themselves. Consequently, no one person or group of particular persons can claim "ownership" of all the contents of this guide to mock trials.

Having made that generalization, we will nevertheless note that some of the materials in the Teacher's Guide for use by students were adapted from two separate identifiable sources, who have given the Institute permission to reprint. One source is the "Illinois Supplement to *Street Law: A Course in Practical Law*," by Terri Engler, Illinois Institute for Continuing Legal Education. The second source is Susan Spiegel, an attorney in St. Louis, Missouri, who has played a leading role with the Resource Center for Law-Related Education in that city, and who designed the Evidence Cases.

Then, too—as many participants in mock trial development will attest—mock trial source materials have had a way of circulating widely and informally throughout the network of schools and Street Law projects. Individuals and groups have borrowed freely from one another and have just as generously lent their revisions, without thought of attribution. For many years, the Institute has served as a central source dispensing know-how on the conduct of mock trials. As might be expected, the Institute's staff has itself both devised original material and adapted material from a variety of sources.

Accordingly, the Institute must settle for offering heartfelt thanks to all those people who have put their imprint in one way or another on the mock trial form. At the same time, in selecting the best and reworking it to fit between the covers of a single publication, the Institute dedicates this manual to all those mock trial participants who stand to gain a sharpened appreciation of the way the legal system actually works and thereby gain new insights into the responsibilities of citizenship in a nation ruled by law.

Patricia McGuire
Georgetown University Law Center
Washington, D.C.

Copyright © 1984 National Institute for Citizen Education in the Law, Washington, D.C.

The purchaser of this copy is hereby authorized to reproduce indicated material for nonprofit educational use. Reproduction for sale is prohibited.

Table of Contents

Editor's Foreword 2
Preface 4

I. Teacher's Guide to Mock Trials 5

A. Introduction for Teachers 6
B. Planning for a Mock Trial 8
1 Time Factors 8
2 Student Involvement 8
3 Preparation of Materials for Students 9
4 Legal Assistance 9
5 Judging 9
6 Classroom Arrangement 10
7 Selecting and Instructing the Clerk 10
8 Preparing the Observers 10
9 Mock Trial Administrative Checklist 10
C. Lesson Plans 11
#1 Introduction to Dispute Resolution, Trial Process, and Steps in a Trial 11
#2 Introduction to the Case 13
#3 Strategy Analysis; Opening Statements 14
#4 Preparation of Plaintiff and Defense Cases 15
#5 The Rules of Evidence and Procedure 18
#6 The Mock Trial 20
#7 Debriefing the Mock Trial 20
D. Bibliography of Other Available Materials on Mock Trials and Mock Trial Competitions .. 21
E. Reproducible Activity Sheets for Students* 22

II. Students' Guide to Mock Trials* 27

A. The Trial Process 28
B. Steps in a Trial 30
#1 The Opening Statement 30
#2 The Direct Examination 31
#3 The Cross Examination 32
#4 The Closing Arguments 33
C. Simplified Rules of Evidence 34
Rule 1. Leading Questions 34
Rule 2. Narration 34
Rule 3. Relevance 34
Rule 4. Hearsay 34
Rule 5. Firsthand Knowledge 35
Rule 6. Opinions 35
Special Procedures 35

*These materials should be duplicated for each student.

Preface

During the past eleven years the D.C. Street Law Project of Georgetown University has used the mock trial, an educational simulation of a real-life courtroom drama, as a vehicle for teaching about the legal process. From the beginning of its use, it was clear that students, teachers, lawyers and law students who participated in these trials found them to be a rewarding educational experience.

In the years since its inception, the D.C. Street Law Project and the affiliated National Institute for Citizen Education in the Law (formerly the National Street Law Institute) have developed and field-tested new trials and materials to help teachers and legal resource persons across the country adopt this methodology. The result has been substantial growth in use of mock trials both inside classrooms and as part of competitions between schools. In a number of states these competitions have expanded into statewide programs.

To facilitate the expanded use of mock trials, especially inside classrooms, we have developed this manual and the accompanying trials. The manual is divided into two principal sections: (1) the Teacher's Guide, which contains specific advice to teachers on all aspects of preparing for the mock trial and specific lesson plans for a two to three-week mock trial unit; and (2) the Students' Guide, made up of perforated sheets to be removed and duplicated for students, which includes three sections — trial process, steps in a trial, and simplified rules of evidence. In conjunction with this manual, teachers need to employ at least one set of case materials.* Each set is made up of a statement of facts of the particular case, four witness affidavits, and pieces of evidence. (The cases should also be duplicated and handed out to the students.)

In the Bibliography of Other Available Mock Trial Materials section, the address and telephone number of our organization is provided if you have questions, comments on the materials, or requests for further assistance. Happy Mock Trialing!

Edward L. O'Brien
Co-Director
National Institute for Citizen Education in the Law
Washington, D.C.

* The Cases are available from Social Studies School Service, 10200 Jefferson Boulevard, Culver City, California 90232

Teacher's Guide to Mock Trials

BEST COPY AVAILABLE

A Introduction for Teachers

Trials and American Society

Whether the issue is teaching evolution in school, the kidnapping of the baby of a famous couple, or a Hollywood lovers' quarrel over property, Americans have long relished the spectacle of the courtroom trial.

In recent history, crowds have strained against police barriers, hoping to get into courtrooms where Presidential counselors were being tried as part of the Watergate conspiracy. They have packed the courtroom where a schoolmistress was on trial for the murder of her lover, a famous physician. They have sat watching while a would-be Presidential assassin's psyche was exposed to the world. The names of the parties to cases like these move into American legal and popular history: John Ehrlichman and Robert Haldeman; Jeanne Harris; John Hinckley. Then, too, the names of the most prominent roleplayers among the judges and attorneys edge into daily conversation, at least for a time: John Sirica, Barrington Parker, F. Lee Bailey, E. Bennett Williams. Scores of reporters, and, in recent years, miles of videotape—even inside some courtrooms—feed this public fascination. Perhaps the media's role in heightening the public's contact with the trial process is most clearly underscored by the fact that one of the nation's most well-known trial celebrities is not a real person at all but the Hollywood creation of a detective out of fiction: Perry Mason.

Media hype aside, there are important reasons for the public attraction to the trial process, and these are undoubtedly inherent in the nature of our government and legal system. Perhaps the most basic of these reasons is the public's perception of the trial as one of society's principal vehicles for the achievement of justice for all citizens, a belief which is the cornerstone of our American legal system. In these times, apparent widespread distrust of the trial process surfaces whenever members of the public loudly protest a verdict, as happened in the John Hinckley case. Yet all in all Americans still cling to the belief that each citizen should have his or her own "day in court." Statistics on the rising number of case filings in the civil courts underscore the exercise of this right of access to the courts.

Some of the public fascination with trials also flows from the nature of a trial as great human drama. In the common view, few secrets can remain cloaked in a trial, or few emotions remain unravelled under the intensity of skillful examination of witnesses.

Many teachers have discovered that American society's attraction to the trial process can be used to an educational advantage. More and more courts are implementing formal visitation programs for students. Bar associations, individual attorneys, and judges willingly lend their time to teachers and students. Significantly, during the past ten years the use of simulations of trials—mock trials—has taken root in the curriculum of many school districts. Two main reasons can be cited for this teaching phenomenon. One is the great public popularity of trials, already mentioned. The second (more significant educationally) is the recognition of the mock trial as a versatile, multi-dimensional teaching device. Because of the number of students a mock trial can involve in working toward the achievement of a wide variety of skills objectives, the mock trial as a teaching device might well earn a reputation for being the "ultimate roleplay."

Objectives of Mock Trials

What educational objectives can a mock trial achieve? Through participation in mock trials and analysis of the activity, students gain an insider's perspective on courtroom procedures. Mock trials help students gain a basic understanding of the legal mechanism through which society chooses to resolve many of its disputes. While learning the details of trial process and procedures, students are also developing a number of critical skills that are universally necessary: critical analysis of problems; strategic thinking; questioning skills; listening skills; skills in oral presentation and extemporaneous argument; and skills in preparing and organizing material. Of particular interest is the high level of cooperation among students needed for successful mock trials. Recent research findings indicate that such cooperative learning activities encourage significant cognitive achievement among students from a variety of backgrounds and also improve students' attitudes toward school and each other.

Participation in mock trials helps students to understand better the roles that the various actors play in the justice system and also the difficult conflicts those persons must resolve daily in performing their jobs. On a more complex level, mock trials also provide students with an excellent vehicle for the study of such fundamental law-related concepts as authority and fairness.

Mock trials also provide a natural opportunity to incorporate field experiences and community resource persons into the school curriculum. Trips to the local courts to observe real attorneys, witnesses and judges in action are a natural prelude to or follow-up activity for the mock trial. In addition, many attorneys, law students and judges are happy to volunteer to come into classrooms to help students prepare, act as judges and/or debrief the trial. This interaction with actual people in the legal system can go a long way toward changing negative attitudes of some students toward "unknown" professions. In addition, these resource people will often develop more positive attitudes toward young people from their experience with mock trials.

Finally, the mock trial experience can serve to prepare students for possible future involvement as parties, witnesses, or jurors in trials. Their participation can reduce fear and help provide the knowledge needed to perform these roles more effectively.

Conducting Mock Trials: Complexity, Flexibility, Simplicity

A teacher new to the use of mock trials may hesitate to undertake a trial for reasons of time and complexity. Teachers should know, however, that a trial simulation is a flexible device, capable of being compacted into one or two classroom periods or expanded into a full unit several weeks in length.

Mock trials may be based on historical events, cases of contemporary interest, school situations, or hypothetical fact patterns. The format of the mock trial can be formal or informal, depending on the objectives of the class and the skills and sophistication of the students. Most mock trials use some general rules of evidence and procedure, an explanation of the basic facts, and brief statements for each witness. Other mock trial formats range from freewheeling activities where rules are created by the student participants (sometimes on the spot) and no scripts are used, to serious attempts to simulate the trial process based on simplified rules of evidence and procedure, to dramatic re-enactments of historical trials in which scripts are relied upon heavily.

Usually, however, scripts are not used. Instead, the students are given a statement of facts and legal issues. They may also be given a set of witness statements, which are not scripts, but affidavits on which the witnesses and attorneys build their witness examination questions and answers. Relevant documentary evidence (e.g., a contract) might also be included in the packet of trial materials. Analysis of the packet of materials and strategic design of each step in the trial represent the most important parts of the student learning experience in the mock trial. For this reason, teachers should avoid scripting the material or doing most of the question and statement preparation for the students.

Simplicity in approaching a mock trial is critical, particularly for a teacher who has not used the device previously. The skills-building objectives should always be in the forefront of the teacher's activities in the mock trial. While real-life simulation is certainly desirable to a point, teachers should be aware that too much legalizing over the issues, too much jargon, too much emphasis on the rules of evidence and procedure tend to diminish the learning value of the mock trial by stifling student interest and making the process too cumbersome for all involved.

B Planning for a Mock Trial

1. Time Factors

A successful mock trial can be a largely impromptu event taking place right in the classroom and occupying one or two class periods at most. It can also be an intricately planned event, with class preparation taking a full week or even more, and with trial presentation requiring two or more complete class periods.

Both types of mock trials, and many variations on them, have demonstrated their value as strategies for learning in the high school classroom. Each teacher needs to exercise discretion in selecting which approach to use. A key criterion is the amount of time available for this activity. Another is the specific learning objectives the teacher is aiming for at that particular point.

The lesson plans provided in this manual are built around time sequences for each activity that have proven realistic on the basis of experience with hundreds of mock trials of all kinds. Throughout, the references to class periods assume 50-minute lengths of time.

2. Student Involvement

A mock trial project should involve every student in the class for the entire unit. Careful planning is essential to achieve this goal of total involvement. Students not assigned specific, active roles quickly lose interest. However, not every student in a large class can play an attorney or a witness. Realistically, then, in classes larger than fifteen or twenty, how can every student be actively involved?

To a large extent, the answer depends on the individual teacher and the classroom situation. Suggestions to aid teachers in arranging total involvement include:

a. Number of Attorney and Witness Roles

In each mock trial case*, *each side* uses two witness roles and six possible attorney roles (listed in Lesson Plan #4). In sum, there are sixteen principal roles.

b. Alternates

Alternate witnesses are essential to safeguard against last-minute absences. Since attorneys can usually cover for each other, teachers can also assign alternate attorneys. With alternates for each attorney and witness role, as many as thirty-two students could be assigned roles.

*The cases are available from Social Studies School Service.

c. Teams

Cooperative learning is one of the important objectives of the mock trial process. The team and small-group activities which are essential to mock trial preparation provide the vehicles for cooperative learning.

Lesson Plan #3 provides instructions for dividing the class into teams. For the purposes of active involvement in trial preparation, every student should be assigned to one team or the other, and should then be expected to participate fully in small-group discussions and team strategy sessions.

The lesson plans call for small groups at certain points and also indicate which principal roles are involved at each stage. The principal role-players and alternates as well as other students to assist them should all be assigned to small groups and participate in them.

d. Role Assignments

Note that specific role assignments for attorneys and witnesses are not mentioned until Lesson Plan #4. Unless the mock trial is to be a fairly short, informal classroom event, there is no need to rush into role assignments. The longer every student remains a candidate for any role, the higher the level of student interest in the mock trial preparations will be.

e. Juries

In large classes it may be preferable to include all unassigned students on the jury. (Note, however, possible other roles, under f. below.) Use of a jury is a good way to keep all students actively involved during the actual trial.

However, during the trial preparation stage, students who will be serving on the jury should be assigned to work with the teams. Even though in real life jury members start a trial impartially with no prior knowledge of the case, in the mock trial the educational value of having jury members assist with case preparation outweighs the need to simulate reality.

Nevertheless, activities designed to demonstrate the importance of an impartial jury are valuable. (One way is to conduct a roleplay of a "voir dire" exercise—this is when lawyers or the judge ask prospective jurors questions to gauge their impartiality. A lawyer could help with this.) If the class strongly desires a truly impartial jury for their trial, another class can be invited to sit as the jury.

f. Other Roles

The trial itself has room for roles other than attorneys and witnesses. These roles include:

1. Judge or Judges (See #5 below)
2. Clerk or Bailiff (See #7 below)
3. Formal Observers (See #8 below)
4. Members of the Jury
5. Court Artist
6. Reporters from Newspapers and TV.

Again, the goal is to involve every student. All students in the class, whatever their eventual role in the trial, should participate on trial preparation teams.

3. Preparation of Materials for Students

The student materials in this manual include an Introduction to the Trial Process, Steps in a Trial, and Simplified Rules of Evidence. (These pages are to be torn out and duplicated for each student.) Cases are available as separate booklets.

Before starting the mock trial unit, teachers need to determine which materials to give the class and when. The teacher may copy and distribute the entire packet at once or give out only sections at a time. A few suggestions that can help with this decision:

a. "The Trial Process" is a general introduction for students who have not previously studied trials in detail, or for those needing refresher reading. It is a good first handout.

b. "Steps in a Trial" is a guide designed to assist students with their preparation for mock trial roles.

c. "Simplified Rules of Evidence" is recommended for distribution only to classes in which the teacher plans to devote a substantial amount of time to trial preparation. For the sake of time and simplicity, teachers may prefer not to use these rules for short, informal mock trials.

d. "Case Materials" are separate packets with the facts and pieces of evidence for the specific trial the class will conduct. All students should receive a copy of this material. (The cases are available from Social Studies School Service.)

4. Legal Assistance

The mock trials presented in the cases include hypothetical laws appropriate for use in any classroom. However, teachers may prefer to use a law actually on the books in the jurisdiction where the school is located. To obtain information about an appropriate law that would work for a mock trial, teachers should consult with a local attorney or attorneys. The Bar Association in the area can often assist teachers in identifying attorneys who could help out.*

Attorneys and law students are also valuable resources to assist students in the actual preparation for a mock trial. When using attorneys or law students as class presenters, team advisers, or judges, the teacher must take the time to brief them so that they understand the educational objectives of the program and recognize that the class will necessarily be using simplified procedures and rules of evidence.

5. Judging

Two important early decisions for the teacher are who will judge the trial and whether to use a jury. These decisions are influenced by time and learning objectives, as well as by class size. A few suggestions might help with this decision:

a. If the judge is to be a student, he/she should be able to learn the trial process well, have the capacity to be decisive, and have the ability to give directions to other students.

b. The teacher may choose to serve as the judge in situations where substantial control over the actual process is important. Such situations may apply with the very first trial, where everyone is a novice; where time is unusually tight; or where the teacher wants to have a free hand in interrupting to explain or drill as the trial moves along.

c. An attorney, law student (preferably beyond first year), or local judge may be invited to act as the judge. This arrangement is most appropriate for the more formal trial where the class has spent much time preparing. As with other situations using an outside resource person, the teacher should make arrangements well in advance. (A full week is minimal.) The resource person agreeing to take the judge's role will need to know the date, time, and place. Equally important, the judge needs to gain a thorough familiarity with the educational objectives of the class and with the simplified procedures that will be used in the mock trial. It is also advisable to pass the actual trial facts and statements on to the judge prior to the trial date.

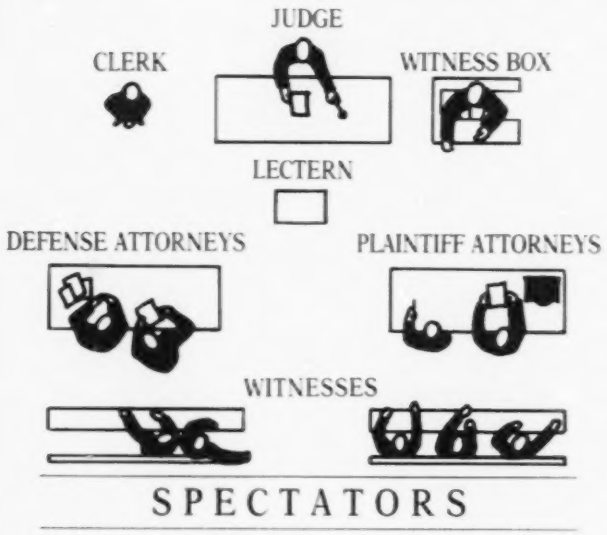
---

* If you would like assistance in finding such attorneys, contact the National Institute for Citizen Education in the Law, 711 G Street SE, Washington, DC 20003 (202) 546-6644.

d. With a large class, the teacher may wish to place the students who are not participants in the trial on a "jury." The jury then has the task of deciding the outcome of the case. When the time comes for jury deliberations, the teacher may find it advantageous not to have the jury go out but have it deliberate fishbowl-style right in the classroom. This gives nonjurors the opportunity to observe the decision-making process, but of course they may not participate in the jurors' discussion.

6. Classroom Arrangement

For the actual trial, the room should be arranged as follows:



If the trial will attract a sizable group of spectators, teachers might wish to hold the proceedings in a larger room or auditorium. Such larger rooms will usually require microphones at the attorney's lectern, judge's bench, and the witness box. All such details should be firm several days before the trial, and audio equipment should be tested and adjusted before the trial gets under way.

7. Selecting and Instructing the Clerk

Every trial should have a clerk (sometimes called a bailiff) who takes care of announcing the entrance of the judge, calling the case, marking evidence, and swearing in witnesses. The teacher should instruct the student selected at least one day before the actual trial. A section entitled "Clerk's Directions" is included as a part of Lesson Plan #6: The Mock Trial.

8. Preparing the Observers

Because there may be more students than can have attorney and witness roles, or than can assume such other roles as bailiff, the teacher may wish to designate observers. This is not just a "catch-all" role. The observers will be valuable in debriefing the trial. They will have the job of observing the trial as it unfolds, of looking for good points and errors and deficiencies, and of making notes that can be referred to afterwards when it comes time to analyze the event.

Lesson Plan #6 reminds the teacher to hand out the Mock Trial Observation Sheet (p. 24) to each observer before the trial begins.

9. Mock Trial Administrative Checklist

These are tasks the teacher should check off as accomplished. Some are noted as "optional"—all others are necessary for successful trials.

- Trial Selected
- Time-frame Determined (dates for each lesson and trial itself)
- Lesson Plans Adapted
- Materials Selected for Students
- Materials Copied for Students
- Students' Preparation Begun
- Court Field Trip Date Set (optional)
- Attorneys (or Law Students) Identified to Help (optional)
- Attorneys Invited (optional)
- Attorneys Briefed (optional)
- Judge Identified
- Judge Invited (actual judge, attorney, teacher, or student)
- Judge Briefed and Provided Materials
- Room Selected
- Microphones Ordered (for larger rooms only)
- Invitations Sent (other classes, administrators, parents, etc.) (optional)
- Observation Sheets Copied and Handed Out (optional)
- Jury Selected/Instructed (optional)
- Clerk Selected/Instructed
- Judge's Robe (an academic gown will suffice), Gavel, etc. Obtained (optional)
- Students' Preparation Completed
- Trial Conducted
- Trial Debriefed

C Lesson Plans

LESSON PLAN #1:
Introduction to Dispute Resolution, Trial Process, and Steps in a Trial
(One to two fifty-minute periods; more, if trip to court is undertaken)

Objectives:

As a result of the activities in this lesson, the students will be able to:

1. Explain the purpose of the trial process.
2. Describe at least one alternative to the trial process.
3. List and explain the major steps in the trial.
4. Name the parties to a case in both a civil and a criminal trial.
5. Explain the roles of attorneys, judge and jury in the trial process.

Activities:

1. **Reading Assignment:** Either for homework or in class, the students should read "The Trial Process" section in this manual.
2. **Vocabulary Exercise:** The teacher might ask students to list at least five new words in "The Trial Process" section for vocabulary building. Alternatively, the teacher might begin a class discussion by listing key words and phrases on the board, e.g., "adversary system," "plaintiff,"* "defendant," "evidence," etc., and eliciting definitions from the class. (10 min.)
3. **Small-Group Discussion Exercise:** Divide the class into groups of 3-5. Ask them to develop at least two examples of noncriminal disputes that might wind up in a trial. Ask them to discuss alternative methods of dispute resolution (such as those listed in "The Trial Process") for each case, and to identify when a trial might be the only solution. (20 min.)
4. **Homework Assignment and Discussion Exercise:** Ask students to bring in an article from a local newspaper concerning an incident that might result in a trial. In class, discuss why the disputes arose. Identify a possible way to settle the cases out of court. Ask the students: If the parties go to court, what would they hope to accomplish? (20 min.)

*Throughout this manual the word plaintiff is used. In doing a criminal case, the word "prosecution" should be substituted for "plaintiff."

5. **Steps in a Trial:**
   a. Have students state the order of events in a trial and list them on the blackboard; alternatively, give large sheets of paper to small groups and ask them to develop their own lists of trial procedure. After full class discussion, discuss ways in which the class's ideas about trial procedure match or vary from the actual procedure. Which is better? Why? (15 min.)
   b. Homework assignment: Direct students to make personal charts of the trial process. Ask students to clip articles about a trial currently in the news and to identify what particular steps in a trial are referred to in the articles.
   c. Quiz: See Review #1 (page 23). Duplicate and pass out the quiz. The correct answers are:
      c 1.
      n 2.
      j 3.
      m 4.
      k 5.
      i 6.
      b 7.
      a 8.
      d 9.
      f 10.

   Main steps in a trial:
   1. Opening statement by plaintiff.
   2. Opening statement by defendant.
   3. Direct examination of plaintiff's witnesses.
   4. Cross examination of plaintiff's witnesses.
   5. Direct examination of defendant's witnesses.
   6. Cross examination of defendant's witnesses.
   7. Closing statement (argument) by plaintiff.
   8. Closing statement (argument) by defendant.

6. **Field Trip to Court:** (A half-day or one full day)
   a. Make arrangements through the clerk of the local court or an attorney for a visit by the class. Different courts handle student trips differently, but good communication with the staff at the local courthouse usually will ensure a worthwhile visit. You will need to find out what phase of a trial the students are likely to be observing, and whether it will be a civil or a criminal proceeding. (If your mock trial will be a civil case, you may prefer to observe a civil trial.)
   b. If the clerk can give you specific information about the case or cases the class will be observing, spend some time in class the day before reviewing the characteristics of the civil or criminal process as appropriate.
   c. As a homework assignment immediately after the field trip, direct the students to write several paragraphs answering these questions:
      - What kind of trial was observed, and what portion?
      - Who were the most important people in the courtroom, and what did they do?
      - What facts did the class learn during their observation?
      - What do you think happened after the class left?
      - Did this process seem like a good way to deal with the particular problem involved? What alternatives would you recommend? (You may wish to design a form for students to fill in for this purpose.)
   d. Discuss the field trip, based on the homework responses, in large or small groups during the next class.
7. **Guest Speakers:** Having an attorney or a judge visit in class is a good alternative or addition to a field trip to court. In arranging for such a speaker, be sure that person is adequately briefed regarding (a) the grade level, age and prior legal knowledge of the class; (b) your objectives for the speaker's visit; (c) particular subject areas the class desires to discuss; (d) details of any activity you plan to conduct while the speaker is present. The better you handle preparation with the guest speaker, the better that class period will turn out. (One Class Period)
8. **Distribute Mock Trial Materials and Assign Reading:** At this point, the mock trial case and related materials should be distributed and assigned for homework reading.

LESSON PLAN #2:
Introduction to the Case
(One to Two Class Periods)

Objectives:

As a result of the activities in this lesson, the student will be able to:

1. Identify the type of case, court, and division of the court.
2. Identify the parties to the case.
3. Describe what each party to the case wants.
4. Describe the stipulated facts on a timeline.
5. Write one paragraph summarizing the facts of the case and the legal issue involved.

Activities:

1. **Reading Assignment:** The case packets should be distributed to be read for homework in advance of the first class. On the first day of class discussion of the case, the teacher should ask a student to read aloud the introduction to the case and the Statement of Facts. (15 min.)
2. **Factual Summary Timeline:** Draw a line across the board as shown at the bottom of this page.

   As in the example below, put important dates from the case on the timeline. Ask the class a series of questions, e.g.:

   What happened on each date given?

   What happened during the intervening periods?

   What information is missing?

   How does the missing information affect the case?

   Where can that information be found?

   The timeline may be used as a means of review, and as a quiz. On each day of trial preparation, until the students know the facts thoroughly, a student could be called to the board to fill in the events on the timeline. A timeline could also be distributed as a quiz, with instructions to the students to fill it in as indicated. (30 min.)
3. **Initial Case Analysis:** With the whole class, elicit facts favorable to the plaintiff and facts favorable to the defendant, and list them on the board in columns. (30 min.)
4. **Homework:** Ask students to write a paragraph summarizing the facts and legal issues. Alternatively, ask students to make two lists, one indicating facts favorable to the plaintiff, the other facts for the defense.

_____ / _____ / _____ / _____ / _____ / _____

Nov. (Year) March (Year) May (Year) Sept. (Year) Jan. (Year)

LESSON PLAN #3:
Strategy Analysis; Opening Statements
(One Class Period)

Objectives:

As a result of the activities in this lesson plan, the students will be able to:

1. Describe the main arguments in favor of each side of the case.
2. Identify the facts that support or weaken each major argument.
3. Summarize the evidence that will be presented on each side of the case.
4. Write an opening statement for one side of the case.

Activities:

1. **Assignment to Sides of the Case:** Once the preliminary factual analysis has been completed, the time is appropriate to assign students to plaintiff or defense teams. The specific role assignments (e.g., attorney, witness) need not be given yet. However, having a particular point of view will help the students begin to engage in strategic analysis of the case.

   Once students are divided into plaintiff and defense teams, the teacher might also find it advantageous to designate team captains. (Appoint or elect, perhaps two for each side, as appropriate for the class.) These students can then be made responsible for leading the small-group discussions and, later on, directing the team's specific case preparation. (This is optional; some teachers prefer not to have student leaders.)
   (10 min.)

2. **Strategic Analysis by Teams:** Split the class into the two team groups (plaintiff and defendant). Each team is directed to discuss the following points:

   What does our side want to achieve in this case?

   How will we accomplish this goal?

   What evidence do we have to help us?

   What evidence do we have that hurts us?

   What can we claim we will prove in the opening statement?

   (15 min.)

3. **Team Brainstorming for Opening Statement:** After about fifteen minutes of the discussion described in #2, the groups can set about the task of brainstorming the general framework for their opening statements. For this exercise, it might be useful to have the students gather their teams at the blackboard or to equip them with butcher block paper. Discussion should focus on:

   What are the most important facts we want to tell the judge in our opening statement?

   What evidence will we present that we should stress?

   What kind of ruling do we want from the judge? How will we ask for that?

   (25 min.)

4. **Homework Assignment:** Once the students have had sufficient time to strategize and brainstorm, they will be ready to write individual opening statements for homework. On the day the assignment is due, each student should get a chance to read the prepared statement to the team, and the team should decide which statement is best, or which portions of various statements might be used in combination.

LESSON PLAN #4
Preparation of Plaintiff* and Defense Cases
Witness Examinations: Closing Arguments
(Two to Three Class Periods)

Objectives:

As a result of the activities described in this lesson plan, the students will be able to:

1. As **examiner attorneys,** write a logical sequence of direct or cross examination questions (depending upon student assignments) designed to achieve the purpose of the witness examination.
2. As **attorneys assigned to the closing arguments,** outline the high points of the ideal closing argument for their respective sides.
3. As **witnesses,** recall from memory the important points made in the witness affidavit, and respond correctly to possible direct and cross examination questions.

Activities:

1. **Role Assignments:** Prior to the lesson, the teacher should assign students to specific roles. These are the available roles for the trials in this packet:

   WITNESSES - Each side has two witnesses; alternates should also be appointed for each role.

   ATTORNEYS - Each side may use up to six attorneys to take each available speaking part; however, teachers may find it advantageous to use only three or four attorneys for each side, assigning more than one speaking part to each.
   Note that during the trial each side gets to carry out direct examination of its own witnesses and to cross examine the opposing witnesses.

2. **Reading Assignment:** Once the roles are assigned, students should be instructed to read the case materials again and study the particular parts of the case materials applicable to their specific roles.

*Throughout this manual the word "plaintiff" is used to represent the party filing the case or bringing it to court. In a criminal case the word "prosecution" should be substituted.

ROLE ASSIGNMENT CHECKLIST

		PLAINTIFF	DEFENSE
Witnesses:	Witness #1		
	(Alternate)		
	Witness #2		
	(Alternate)		
Attorneys:			
Opening Statement			
Direct Examination — Witness #1			
Direct Examination — Witness #2			
Cross Examination — Opposing Witness #1			
Cross Examination — Opposing Witness #2			
Closing Argument			

3. **Small Group Preparation #1:** (One Class Period) Separate the class into plaintiff and defense teams. Divide each team into three working groups as follows:

PLAINTIFF TEAM

P1 Witnesses & Alternates

P2 Examining Attorneys

P3 Attorneys assigned to make opening and closing statements

DEFENSE TEAM

D1 Witnesses & Alternates

D2 Examining Attorneys

D3 Attorneys assigned to make opening and closing statements

Instructions for the Groups

(First Drill) Witness Groups (P1 and D1):

The purpose of this session is to drill the witnesses and alternates on their knowledge of the facts and their witness statements. Through taking turns drilling each other, students will begin to acquire information about all other witness statements.

Witness #1 is the first to be drilled. Starting with "State your name, please" and proceeding through the witness statement, Witness #1 is asked every conceivable question by the other students in the group. Witness #2 and then the alternates follow suit.

The questioning drill continues around the circle until each student can answer the questions without looking at his or her statement.

Once the initial knowledge is acquired, the Witness Group should focus on style and characterization. Going around the circle again, the students should help each other try to develop a specific type of character and responses to fit their roles.

Examining Attorney Groups (P2 and D2):

During this session, the attorneys conducting each direct examination begin designing the questioning strategy for each witness in consultation with the other attorneys in the group. The group should start with Witness #1, and, as a group, outline the basic series of direct exam questions needed for that witness. They then do the same for Witness #2. Attorneys should write out the examination questions for homework.

Attorney Group for Statements (P3 and D3):

The purpose of this group is to brainstorm the principal points to be included in opening statements and closing arguments. After the outlines are planned together, the students then work independently to write the statements. (These can also be drafted for homework.) Once the statements are written, the students reconvene to hear and critique each other's statements.

4. **Small Group Preparation #2:** (One Class Period) This phase of class preparation for the mock trial helps students to rehearse and refine their case presentation. Reorganize the team groups as follows:

PLAINTIFF TEAM

P1 Opening and Closing Attorneys

P2 Witnesses and Direct Exam Attorneys

P3 Cross Examination Attorneys

DEFENSE TEAM

D1 Opening and Closing Attorneys

D2 Witnesses and Direct Exam Attorneys

D3 Cross Examination Attorneys

Instructions for the Groups (Second Drill)

Opening and Closing Attorneys (P1 and D1):

Each attorney delivers the prepared statement. The others in the group critique.

Witnesses and Direct Examination Attorneys (P2 and D2):

Using the direct examination questions developed earlier, the attorneys rehearse the examinations with the witnesses and make changes as necessary.

Cross Examination Attorneys (P3 and D3):

The attorneys responsible for cross examination for each side can assist each other in trying to project what testimony might be given on direct exam, thus showing what material might be appropriate for cross examination. Attorneys can plot out a series of possible cross examination questions and ask each other the questions to see how they will work. (These students do need to remember that they will have to alter their prepared material, to some extent, based on what happens in the direct examination.)

LESSON PLAN #5:
The Rules of Evidence and Procedure
(Two to Three Class Periods)

(Depending upon the complexity of the trial and the amount of time available, teachers may choose to reduce the scope of this lesson plan. So that students will understand the relationship between these rules and the evidence they plan to present, teachers should use this lesson plan only after the teams are well involved with the case preparation.)

Objectives:

As a result of the activities described in this lesson plan, the students will be able to:

1. Explain the purpose of the rules of evidence.
2. Recognize leading questions, hearsay, irrelevant testimony, and opinions.
3. Make proper objections to violations of the rules of evidence.
4. Know how to respond to an objection.
5. Correctly introduce a piece of evidence.
6. Explain the concept of "impeachment."
7. Give an example of impeachment.

Activities:

1. **Reading Assignment:** Teacher may choose to assign students to read the rules of evidence for homework, or have them read aloud in class. (15 min.)

2. **General Discussion:** What is the purpose of the rules of evidence? What might happen without them? What situations have students encountered in their lives that had specified rules of procedure? What would have happened without these rules? Are there situations from their everyday lives where these rules come up? (E.g., would a parent punish a child who said, "I think my sister did it"?) (20 min.)

3. **Discussion of Examples:** Taking each rule of evidence, teacher repeats what the rule is. Teacher asks for an example of a rule violation, other than one given in the text. What harm would come if the particular rule did not exist? Is this a useful rule? Are the rules given sufficient to make the trial fair? What rules would the class add? (30 min.)

4. **Team Drill:** Return the class to plaintiff and defense teams. Ask one attorney to start direct questioning of a witness in the case you are preparing. All others in the group listen for violations of rules of evidence, and make objections as appropriate. (20 min.)

5. **Individual Drill:** On the board, write steps for introduction of physical evidence. Drill each attorney individually. (20 min.)

6. **Discussion of Impeachment.** Ask the class for their understanding of the concept of impeachment. Explain how the concept is applied in a trial to shake the credibility of a witness. (E.g., an attorney on cross examination might show a witness a prior statement which contradicts testimony just made on direct examination.) For homework, ask each attorney/witness team to develop one example of possible impeachment for that witness. Demonstrate the examples in the next class.
(20 min.)

7. **Review #5(a): Evidence Exercise.** (Hypotheticals on page 25 . Hand to students and discuss.) (15 min.)
   Answers to Review Exercise 5(a) are as follows:
   a. This is allowed as a statement by a party (the defendant here) as an exception to the general rule against hearsay. The defendant is present and can of course deny having made the statement.
   b. This is a leading question as it has the answer the attorney wants in the question and cannot be asked on direct examination. (It could be asked on cross examination.)
   c. Yes, this is not leading.
   d. No, this is not relevant to the contract issue.
   e. Yes, this may be relevant to issues in a divorce case.
   f. Yes, if the witness could not remember he may be shown a written statement to refresh his recollection. The attorney does not have to introduce the statement into evidence.
   g. Yes, this is proper, to impeach the credibility of a witness.

h. No, on cross examination an attorney may only bring up issues raised on direct examination; this is called a question outside the scope of the direct examination.

i. Yes, if Herb is first certified as an expert witness through being questioned about his prior training and experience.

j. No, not as an expert, but he can testify to the fact that the victim appeared to be in pain or to other facts from his direct observation.

k. No, one can testify only to things one knows from direct knowledge.

8. **Review #5(b). Evidence Drill.** (The Evidence Cases are on pages **25** and **26**.)

This review exercise will help the students recognize improper questioning in a trial. They will also understand better the rationale for evidentiary rules and will get valuable practice in conducting proper introductions of evidence. Attorneys could be asked to come in to help with this exercise.

To prepare for this exercise, the teacher will need to do the following:

1. Read over the Evidence Cases (pages 25 and 26). Teacher will need to decide how to assign witness and attorney roles for each case. (There will be eleven witnesses and eleven attorneys. If the class is smaller than 22 students, some can get more than one assignment.)
2. Duplicate the Evidence Case pages at least twice (more, if needed).
3. Cut the cases apart. *For the eleven students who will act as witnesses, black out or cut off the lower part of the slip that describes the lawyer's job.* (Otherwise, the witness will have advance knowledge of what the lawyer is going to try.) Only each lawyer gets the entire slip.
4. Hand out the slips as appropriate. Tell students not to disclose their roles to the other students.
5. Teacher calls out the case number at random and reads the facts portion (at the top) to the entire class. Student who has that case performs the lawyer's role as instructed on the slip. The witness responds appropriately. (Teacher should see that this exchange is kept brief so as not to have too much material for the class to react to.)
6. Teacher instructs the other students to observe each lawyer's action, and to make appropriate objections, if warranted. The student who volunteers an objection must explain the objection. For example, he or she should not merely call out "hearsay," but should indicate "hearsay, because..." Also, when making objections, students should practice using the proper form of address. For example, "Your Honor, I object to (type of objection) (because)" or "Your Honor, objection! The attorney is (type of objection) (reason)."
7. If the questioning can be done differently to avoid the evidence problem, the student playing the lawyer should rephrase the question properly.
8. Repeat as necessary with the remaining cases.
9. Debrief each case, encouraging discussion of the rationale for each kind of objection.

(Amount of time for drill above will vary.)

LESSON PLAN #6:
The Mock Trial
(One to Two Class Periods)

Objectives:

As a result of the activities described in this plan, the students will be able to:

1. Conduct a mock trial, correctly following the sequence of steps in a trial and employing good technique for each role.
2. Make complex prepared oral presentations as attorneys and witnesses.
3. Demonstrate skill in listening, rapid critical analysis, and extemporaneous speech.
4. Demonstrate knowledge of the rules of evidence and procedure.
5. Demonstrate knowledge of the law applicable to the case.

Activities:

Conduct the Mock Trial. Prior to the date of the Mock Trial, the teacher should be sure to have accomplished most of the tasks described in the "Mock Trial Administrative Checklist" (page 10). Be sure each formal observer has a copy of the Mock Trial Observation sheet at the start of the trial. Follow the steps in a trial listed in the Students' Guide: Section B.

Clerk's Directions:

A student should be selected to serve as the court clerk (referred to as the "bailiff" in many courts). This student should announce the opening of the court by stating "all rise" as the judge enters and then stating "please be seated" when the judge is seated. The clerk then calls the name of the case, e.g., "Your honor, our case for today is St. Clair v. St. Clair."

As witnesses are called the clerk requests them to raise their right hands and asks, "Do you swear to testify to the truth, the whole truth and nothing but the truth?" When attorneys have documents (such as an affidavit or another piece of evidence), they should first hand them to the clerk who marks it "Plaintiff's Exhibit A, B, C etc." and "Defendant's Exhibit A, B, C etc.", depending on which attorney is presenting it.

Further details about the clerk's handling of items for identification can be found under "Special Procedures" in the "Simplified Rules of Evidence" section of the Students' Guide.

LESSON PLAN #7:
Debriefing the Mock Trial
(One Class Period or Less)

Objectives:

As a result of the activities described in the lesson plan, the students will be able to:

1. Analyze the strong and weak points of each case presented in the trial.
2. Identify the person or persons whose performance in the trial made a difference in the case.
3. Critique the trial from the standpoint of its success in achieving justice.

Activities:

1. **Observers:** Any student who was designated as an observer for the trial should have completed an Observation Sheet. (The sheet is on page 24.) After the trial is completed, the observers make reports of their observations to the class.

2. **Teams:** After hearing the reports of the observers, or in lieu of observer reports, plaintiff and defense teams should re-form as small groups to discuss these questions:
   - What were the strong points in our presentation?
   - What were our weak points? How could they have been avoided?
   - Were our attorneys prepared correctly?
   - Did we make good objections?
   - Was the trial conducted in a fair manner?
   - Did we achieve our goal? Why or why not?
   - Even if we achieved our goal, could we have accomplished it in a different manner?

3. **Large-Group Discussion:** After the small groups have completed this discussion, summaries of their responses to these questions should be given to the whole class, with any appropriate additional discussion led by the teacher or an attorney, if one was present at the trial. An attorney (or judge) can be especially effective in debriefing a mock trial by comparing what went on to what usually occurs in real courts.

4. **Written Assignment:** In class or as homework, have students write a brief essay telling whether or not the trial was a sensible way to achieve justice in this particular case, and whether justice was achieved, in fact.

D Bibliography of Other Available Materials on Mock Trials and Mock Trial Competitions

The National Institute for Citizen Education in the Law (address below) will provide you upon request a bibliography of its materials on mock trials and competitions. A number of other national, state and local organizations have developed mock trial materials and sometimes sponsor or coordinate mock trial competitions. NICEL will also respond to requests for assistance in locating such organizations.

Contact:

National Institute for Citizen Education in the Law
711 G Street SE
Washington DC 20003
(202) 546-6644

For Information on Case Materials designed especially for mock trials contact:

Social Studies School Service
10200 Jefferson Boulevard
Culver City CA 90232
(800) 421-4246
(213) 839-2436

E Reproducible Activity Sheets for Students

The following sheets listed below are to be reproduced as indicated in the teacher's guide. For directions refer to the pages shown on the right:

Review #1 ..... **Lesson Plan #1, Activity 5c, page 11**

Mock Trial Observation Sheet ..... **Lesson Plan #7, Activity 1; page 20**

Review #5(a) ..... **Lesson Plan #5, Activity 7, page 18**

Review #5(b) ..... **Lesson Plan #5, Activity 8, page 19**

REVIEW #1:
Trial Process and Steps in a Trial

(From Column B place in the blank the letter for the word or phrase that most closely matches the definition in Column A.)

COLUMN A	COLUMN B
___ 1. Trier of fact	a. prosecutor
___ 2. The burden of proof in a civil case	b. closing argument
___ 3. Process of sharing information before trial	c. jury
___ 4. Adversary process	d. evidence
___ 5. Written statement made by witness	e. direct examination
___ 6. One type of defense in a criminal case	f. negotiation
___ 7. Final step in the trial before the judge's decision	g. plaintiff
___ 8. Person who represents the government in a criminal case	h. civil case
___ 9. What each party needs to present to prove their facts	i. alibi
___ 10. One way to settle a dispute without going to trial	j. discovery
	k. affidavit
	l. defendant
	m. trial
	n. preponderance of the evidence

List in Order the Main Steps in a Trial:

1. _____ 5. _____

2. _____ 6. _____

3. _____ 7. _____

4. _____ 8. _____

Mock Trial Observation Sheet

Please note comments about each presentation, including things which could have been done differently or improved upon.

PLAINTIFF TEAM	DEFENSE TEAM
Opening Statements	Opening Statements
Direct Exam of First Plaintiff Witness	Direct Exam of First Defense Witness
Direct Exam of Second Plaintiff Witness	Direct Exam of Second Defense Witness
Cross Exam of First Defense Witness	Cross Exam of First Plaintiff Witness
Cross Exam of Second Defense Witness	Cross Exam of Second Plaintiff Witness
Objections	Objections
Procedures for Using Documents	Procedures for Using Documents
Closing Arguments	Closing Arguments
	Observer's Name: _____
	Date: _____

REVIEW #5(a):
Rules of Evidence Hypotheticals

a. Doug told me he killed his brother and Doug is on trial for the murder. Should I be able to testify to what he told me?

b. During direct examination, the attorney wants to show that the witness, David, was at school on November 30. Can he ask, "You were at school on November 30, isn't that correct?"?

c. Same situation as in b. Can the attorney ask David, "Where were you on November 30?"?

d. Harry is being sued in a civil trial for breach of contract. Can the plaintiff introduce evidence that Harry has been unfaithful to his wife?

e. Can Harry's unfaithfulness be introduced in a contested divorce case?

f. John made a sworn statement two days after the automobile accident he had witnessed. When the case finally comes to trial and he is called as a witness, John cannot remember what happened. Can his attorney show John the statement that may help him remember? Must the attorney introduce the statement into evidence?

g. Same situation as in f, only John does remember and testifies on direct examination. However, his testimony contradicts his earlier sworn statement. On cross examination, can the other attorney bring up the inconsistencies?

h. Mary is in a car accident and she sues the other driver. On her direct examination, damage to the car is never mentioned. Can the defense, on cross examination, ask about the repair costs of the car?

i. Herb is a doctor. The attorney has Herb testify to this when Herb is on the stand. Can Herb testify that in his expert opinion, the victim was suffering from a fracture of the right leg?

j. Can Joe, a plumber who worked with the victim, testify that the victim was suffering from a fracture of the right leg?

k. Kevin has never seen Amy with her baby. Can Kevin testify that Amy is a terrible mother?

REVIEW #5(b):
The Evidence Cases

1. **The case:** A delinquency proceeding in juvenile court resulting from serious assault on a student on a school playground.

   The witness on the stand: The mother of the victim.

   Your job as an ineffective lawyer: Ask the witness a HEARSAY question.

2. **The case:** A dispute over the amount of money owed under a written contract.

   The witness on the stand: One of the parties to the contract.

   Your job as an effective lawyer: You want to have the written contract introduced into evidence as an EXHIBIT. Ask the witness questions to identify the contract and move the exhibit into evidence.

3. **The case:** A lawsuit brought by a woman who fell on spilled pickle juice at 9:30 p.m. in a grocery store.

   The witness on the stand: The plaintiff (the woman who fell).

   Your job as an ineffective lawyer: Ask the witness an IRRELEVANT question.

The Evidence Cases

4. **The case:** A medical malpractice suit—a doctor prescribed medicine for a pregnant woman and the baby was born retarded.

   The witness on the stand: The father of the child.

   Your job as an ineffective lawyer: Ask the witness an objectionable OPINION question.

5. **The case:** A contested marital dissolution (divorce) in which the wife is accused of being a chronic alcoholic.

   The witness on the stand: The wife.

   Your job as an ineffective lawyer: BADGER the witness with questions.

6. **The case:** A dispute over the custody of two children.

   The witness on the stand: The mother of the children. (She is being questioned by her lawyer.)

   Your job as an ineffective lawyer: Ask your client on the stand a LEADING question.

7. **The case:** A department store sues a customer for failing to pay the bill.

   The witness on the stand: The customer.

   Your job as an ineffective lawyer: Ask the witness an objectionable question about his CHARACTER.

8. **The case:** Criminal trial for purse snatching.

   The witness on the stand: An eyewitness testifying for the defense; she just testified that the defendant looks like the person who committed the crime.

   Your job as an effective lawyer: IMPEACH (destroy the credibility of) your witness.

9. **The case:** A criminal trial for burglary; the defendant claims he was in Florida on the day of the crime.

   The witness on the stand: The defendant.

   Your job as an ineffective lawyer: Ask the witness an objectionable CHARACTER question.

10. **The case:** A suit for emotional distress suffered by a man who found a dead mouse in his soda.

    The witness on the stand: The man who found the mouse.

    Your job as an ineffective lawyer: Ask the witness BADGERING questions.

11. **The case:** A dispute between a customer and a TV seller resulting from the failure of the seller to repair the set.

    The witness on the stand: The consumer.

    Your job as an ineffective lawyer: Ask the witness a HEARSAY question.

Students' Guide to Mock Trials

BEST COPY AVAILABLE

A The Trial Process

The Purpose

"Equal Justice Under Law" are the words carved deep into the stone above the entrance to the Supreme Court of the United States. This statement reflects the primary purpose of law in the United States: to ensure that every person living in this country has the freedom and security to enjoy the benefits of life in a democratic society.

According to the democratic principles on which American society is built, every person should have a free and equal opportunity to pursue individual goals and desires. However, so that one individual's pursuit of happiness does not infringe upon another's, the citizens of this country, through the electoral and legislative processes, agree upon certain guidelines for their behavior. These guidelines comprise our system of law.

However, at times individuals come into conflict with one another, in spite of the system of laws. The reasons for conflict are varied. Laws do not cover every possible situation. Often the individuals involved do not know or understand the law. In certain cases an individual deliberately chooses to break the law.

Whenever a dispute arises between individuals or between an individual and the government, or whenever an individual offends the general will of the people by breaking the law, a solution must be found that is in harmony with the principles of our society. The solution might be a clarification of the rights of the parties; a determination of right and wrong, or guilt and innocence; a direction to one individual to take certain actions to make up for harming another's rights; or even a fine and/or a sentence as punishment for breaking the law.

A trial is a widely recognized means for settling such disputes. However, going to court usually should be the last resort in seeking a solution. People should try to work out their problems first in one-to-one communication, or with a third person. Three common ways of settling disputes without going to court are: (1) *negotiation*, in which the parties talk face-to-face; (2) *mediation*, in which the parties talk through a third person called a "mediator" who helps them find a common ground on which they can agree to a solution; and (3) *arbitration*, a process less formal than a trial, in which a third party hears the complaints and makes a decision that the parties have agreed in advance to abide by.

However, when these methods fail, parties to the dispute sometimes go to a trial to find a solution. A trial is an "adversary process." This means that two or more persons who are in conflict present their arguments and their evidence before a third party not involved in the dispute, who then renders a decision. The "impartial" third party that renders the decision can be a judge or a jury. The judge or jury functions as the "trier of fact."

The Parties

A trial revolves around an argument involving two or more people. The people who bring their argument to the trial are called the "parties" to the case.

A civil trial involves one person complaining about something another person did or failed to do. The person who does the complaining is called the "plaintiff," and the person who is the object of the complaint is the "defendant."

In a criminal trial, a person is accused of a particular act which the law calls a crime, such as murder, robbery, or fraud. The person who does the accusing is the "prosecutor." The prosecutor speaks on behalf of the government, which in turn represents the people of the state or nation. The person who is accused of the crime is the "defendant."

Except in a few special circumstances (most notably small claims court cases in which lawyers frequently are not involved), both parties will hire and instruct lawyers to prepare their respective cases and to make their arguments in court.

The Facts of the Case

Long before a trial actually takes place, some argument or incident occurs. Perhaps there is a traffic accident; a husband and wife decide they can no longer live together; someone is robbed at gunpoint. The argument or incident involves many facts, which together make up the "case." Persons on opposite sides of a case often will view the facts quite differently. This disagreement over the facts of an incident forms the basis for a trial.

In a trial, the parties present their differing versions of the facts before an impartial "trier of fact," a judge or a jury. The job of the trier of fact is to decide which facts are correct.

The Evidence

While the description of the facts of the argument or incident as presented by each party is important, the trier of fact usually needs a lot more information in order to make a decision. The version of the facts given by the parties may be incomplete, or affected by their emotional state at the time of the incident. Or, in a few cases, parties might even give false versions of the facts.

For all of these reasons, the trier of fact needs more information than just the stories of each party. In a trial, the attorneys for each side present all of the factual information they can gather to support their side of the case. This information is called "evidence."

Evidence may take several forms including:

- *Testimony:* A person, called a "witness," tells the court what he or she saw, heard, did, or experienced in relation to the incident in question.
- *Documents:* Letters, notes, deeds, bills, receipts, etc., that provide information about the case.
- *Physical Evidence:* Articles such as weapons, drugs, clothing, etc., that can provide clues to the facts.
- *Expert Testimony:* A professional person, someone not involved in the incident, who can give medical, scientific, or similar expert instruction to help the trier of fact decide the importance of the evidence presented.

The Burden of Proof

To guarantee that the trial process is fair to everyone involved, certain legal principles govern the way parties present their evidence, and the way the judge or jury considers the evidence and makes a decision.

One of the most important rules concerns which party must prove his or her version of the facts, and how convincing he or she must be. This rule is called the "burden of proof."

In a civil case, the person who brings the case to court and does the complaining (the plaintiff) has the burden of proof. Plaintiffs must convince the judge or jury that these facts are correct "by a preponderance of the evidence," meaning that their evidence is slightly more convincing than the defendants'. Some refer to this as meaning that 51 percent or more of the evidence supports plaintiffs' side.

In a criminal case, the burden of proof is considered to be much stricter, because the defendant may go to prison if the prosecutor proves the state's case. Therefore, the prosecutor must convince the judge or jury "beyond a reasonable doubt" that the accused committed the crime. Some state that "beyond a reasonable doubt" means that the trier of fact (judge or jury) must be at least 95 percent sure that the prosecutor is correct.

The Defense

As described above, the complaining or accusing parties usually have the burden of proving their particular version of the facts. The job of the defense team is to present evidence which prevents the plaintiff or prosecutor from meeting the burden of proof. Defense evidence should explain, disprove, or discredit the evidence presented by the other party. For example, in a traffic accident case, suppose the plaintiff presents a witness who testifies that the defendant was speeding just prior to hitting the plaintiff's car in an intersection. The defense could then present a witness who tells the court that the plaintiff, who was hit while making a left turn, failed to signal before making the turn. The defense could also try to show that the defendant was not speeding at all. This defense testimony weakens the plaintiff's case by presenting an alternative explanation for the accident.

In criminal cases, defendants try to discredit the evidence presented by the prosecutor in a variety of ways, including: (1) presenting evidence to show that the defendant was not present at the scene of the crime (called an "alibi"); (2) showing that the defendant was acting to protect him/herself (self-defense); and (3) presenting medical evidence showing that the defendant was mentally deranged at the time of the crime (insanity defense).

Preparation for Trial

Attorneys are responsible for collecting all of the evidence that supports the side of the case they are representing and for deciding how to present that evidence at the trial. It is the attorney's job, therefore, to work out a strategy for the trial.

In general, there should not be any surprises at the trial (contrary to popular belief) if the attorneys are well prepared. This lack of surprises is also due to the fact that the attorneys for the opposing sides must let each other know what evidence they have collected. This advance sharing of information is called "discovery." Discovery enables both sides to prepare their cases as well as possible, to ensure that the trial is fair.

Before the trial, witnesses might make "affidavits," which are written statements of the facts, made voluntarily and sworn to, usually in the presence of a notary or other person authorized to administer oaths. Witnesses might also be required to give a "deposition," which is testimony given out of court. At a deposition, attorneys for both sides are present to question the witness, while a stenographer records the testimony for later use in court.

During this period before the trial, attorneys must also spend time preparing for what they will actually say and do at each step in the trial. These steps and suggestions for attorney preparation are contained in the next section.

B Steps in a Trial

Note to Students: Wherever the word "PLAINTIFF" appears below, substitute "PROSECUTOR" for a criminal case.

A number of events occur during a trial, and most must happen according to a particular sequence. (The sequence may vary slightly based on state or local rules or practice.)

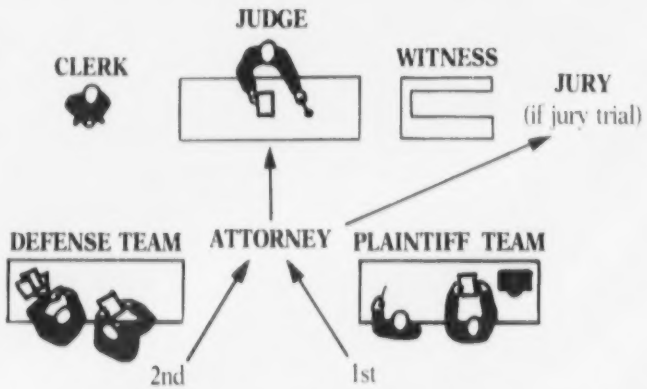
The following is the basic sequence in the trial process:

1. Judge enters and takes the Bench.
2. Clerk calls the case.
3. Plaintiff (Prosecutor in criminal case) makes an opening statement.
4. Defense makes an opening statement.
5. Plaintiff presents case:
   a. Plaintiff calls first witness and conducts direct examination.
   b. Defense cross examines the witness.
   c. Plaintiff conducts redirect examination, if desired.
   d. Steps a, b, and c completed for each of the plaintiff's other witnesses.
6. Plaintiff rests case.
7. Defense presents case in same manner as Plaintiff in #5 above, with Plaintiff cross examining each witness.
8. Defense rests.
9. Plaintiff makes closing argument.
10. Defense makes closing argument.
11. Plaintiff offers any rebuttal argument.
12. Jury instructions (if jury trial).
13. Jury/judge deliberations.
14. Verdict/decision/judgment.
15. Order (civil trial); Sentence (if found guilty in a criminal trial).

The *main* steps in the trial sequence above—before the judge or jury start deliberating—can be summarized as (1) opening statement by plaintiff; (2) opening statement by defense; (3) direct examination of plaintiff's witnesses; (4) cross examination of plaintiff's witnesses; (5) direct examination of defense witnesses; (6) cross examination of defense witnesses; (7) closing statement (argument) by plaintiff; and (8) closing statement by defense. Note how the sides take turns.

In the following sections, the four most critical stages of the trial are highlighted.

STEPS IN A TRIAL #1
The Opening Statement



DESCRIPTION: The opening statement is the introduction to the case, the very first time the attorneys for each side get to tell the judge and jury about what happened to their clients. The first impression is very important; it "paints a picture" of the case that will be presented for each side. Opening statements should include: (1) a summary of the facts according to each party; (2) a summary of the evidence that will be presented at the trial; and (3) a statement regarding what the party hopes to get out of the trial.

Style Points:

1. **Plaintiff's Attorney:** Since this attorney speaks first, it is very important for the plaintiff's opening statement to include a good summary of the facts, presented in a light most favorable to the plaintiff. If the opening statement presents a very convincing picture of the plaintiff's case, the defense team will have a much harder time changing the minds of the judge and jury.

2. **Defense Attorney:** The defense team always has the task of showing that the plaintiff's version of the facts is not correct. In preparing an opening statement, the defense attorney will have to guess how much detail and what kind of emphasis the plaintiff's attorney

will make in the plaintiff's opening statement. The defense attorney should be ready to make adjustments in his or her prepared statement while the plaintiff's attorney speaks. The defense attorney should highlight the facts that are in dispute, and emphasize the kinds of evidence the defense will present to show that the plaintiff is wrong.

Both attorneys should practice making eye-to-eye contact with the judge while speaking.

STEPS IN A TRIAL #2
The Direct Examination

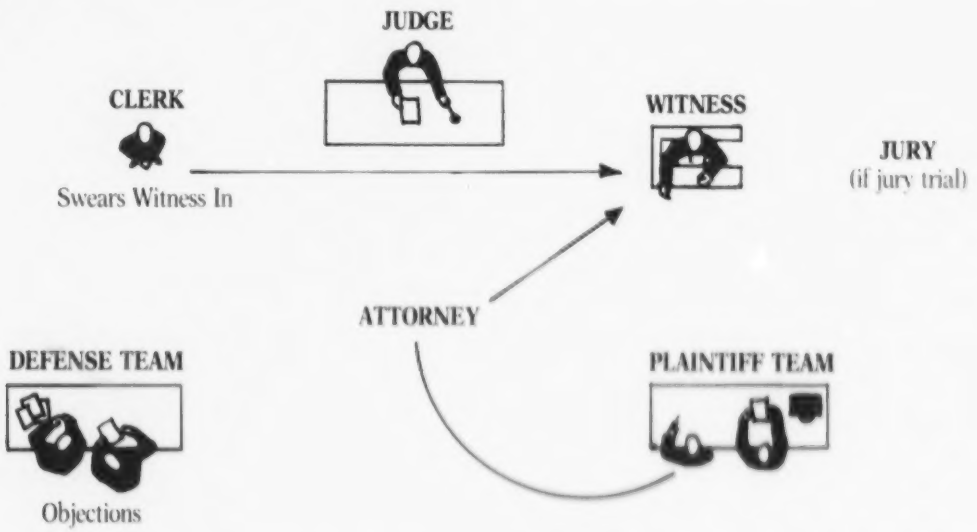
Diagram (at bottom of page) shows Plaintiff's direct examination of a witness.

DESCRIPTION: After the opening statements, the process of "witness examinations" begins. First, the plaintiff's team presents its witnesses, then the defense team. Each time a witness is called to the stand, the attorney who called the witness asks a series of questions called the "direct examination." These questions are designed to get the witness to tell a story, reciting what he or she saw, heard, experienced or knew about the case. The questions must ask only for facts, not for opinions (unless the witness has been declared to be an "expert" in a particular subject, such as a doctor or a police detective). In addition, the attorney may only ask questions and may not make any statements about the facts, even if the witness says something wrong. When the direct examination is completed, an attorney for the other side then asks questions to show weaknesses in the witness' testimony, a process called "cross examination."

Style Points:

1. **Attorney Conducting Direct Examination:** Questions should be designed to get the witness to tell the story in a logical manner. Avoid lengthy or complicated questions. Leading questions cannot be used on direct examination. (See Rules of Evidence section.) Be prepared to rephrase questions in case the witness does not understand a question or fails to remember facts accurately, or in case the other side objects to a question. (Grounds for objections are discussed in the Rules of Evidence section.)
2. **Opposing Attorney:** Listen carefully to the questions and answers, since cross examination must be limited to subjects discussed in the direct examination. Listen for violations of the Rules of Evidence, and be prepared to make good objections.
3. **Witnesses:** The most important factor in the trial is the *believability* (often called "credibility") of the witnesses. Witnesses should tell their stories clearly with as little hesitation as possible. It's important for witnesses to know the facts thoroughly.

NOTE: At the close of cross examination (see next section) the attorney who conducted the direct exam may do a "redirect." A redirect examination follows the same rules as direct. However, the questions are limited to subjects discussed in the cross examination.



BEST COPY AVAILABLE

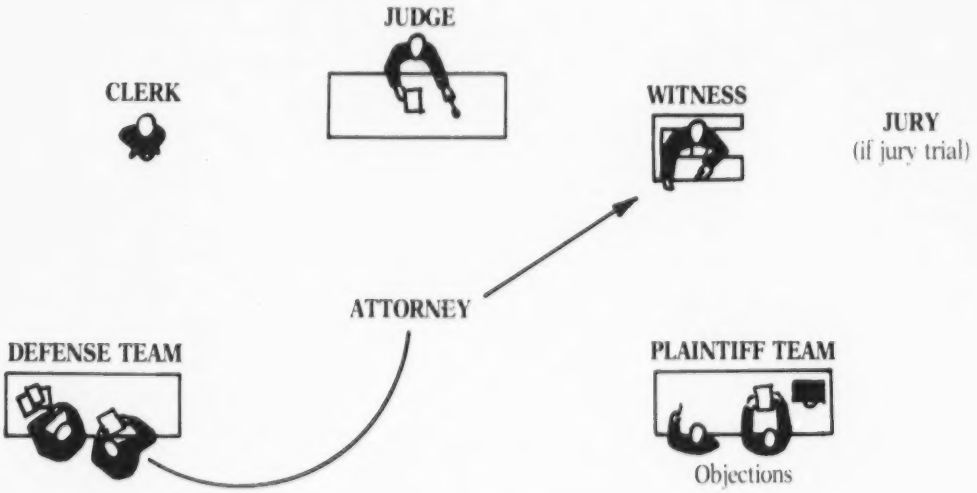
STEPS IN A TRIAL #3
The Cross Examination

Diagram (at bottom of page) shows Defense Attorney cross examining a Plaintiff's witness.

DESCRIPTION: The purpose of the cross examination is to show the judge and jury that a given witness should not be believed because that witness: (1) cannot remember facts; (2) did not give all of the facts in the direct examination; (3) told a different story at some other time; (4) has a reputation for lying; (5) has a special relationship to one of the parties (maybe a relative or close friend) or bears a grudge toward one of the parties. The cross examination questions are designed to bring out one or more of the above factors. These questions must be limited to subjects discussed in the direct examination or they can be objected to as "outside the scope of direct examination."

Style Points:

1. **Attorney Conducting Cross Examinations:** This attorney must know precisely what kind of weaknesses he or she wants to show in the witness, and then design the questions to point them out. Questions should be short; "leading" questions (discussed in the Rules of Evidence) are allowed (For example, the attorney may use questions with phrases like, "Isn't it true that . . .?") Questions should not be long or argumentative, nor should they ask the witness "How," "Why" or "Could you explain." Questions are best that call for a simple "yes" or "no" answer. Questions that give the witness a chance to make an explanation will usually not help the cross examiner's case.
2. **Opposing Attorney:** Listen carefully for violations of the Rules of Evidence, and be prepared to make objections. Listen carefully to the kind of attack the cross examiner is making; decide whether the attack is successful. After the cross examination, the opposing attorney may conduct a "redirect" examination, to give the witness a chance to explain or correct some points made in the cross examination.
3. **Witness:** Witnesses should try to give explanations whenever possible. Witnesses must pay close attention during cross examination, since the attorney *may* try to confuse the witness. They should try to stick to the facts they recited on direct examination.



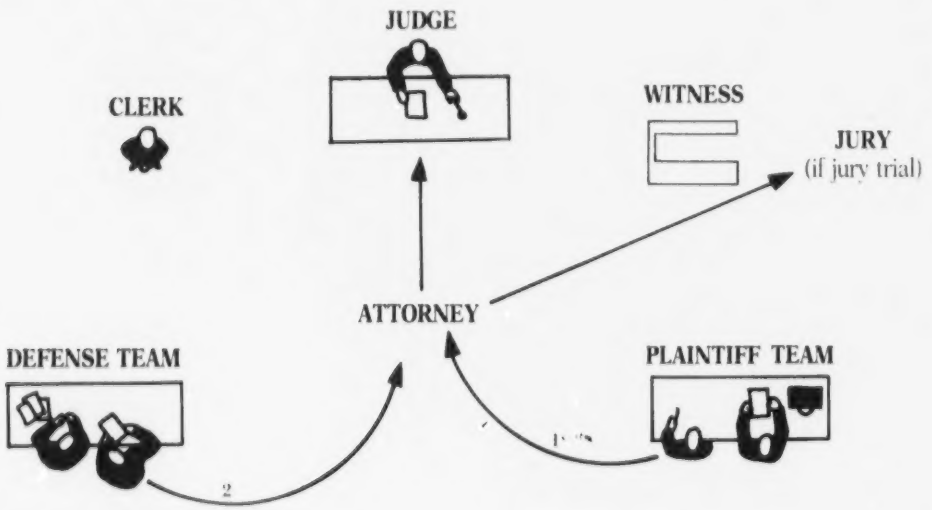
STEPS IN A TRIAL #4
The Closing Arguments

Diagram (at bottom of page) shows attorney (could be either defense or plaintiff's) presenting the closing argument.

DESCRIPTION: The purpose of the closing argument (or "statement") is to convince the trier of fact (judge or jury) that the evidence presented is sufficient to win the case for whichever side the attorney is representing. The closing argument should include: (1) a summary of the evidence presented that is favorable to the presenting attorney's side; (2) a summary of the case; and (3) a legal argument showing how the law requires the judge or jury to interpret the facts, and why that law requires them to rule in favor of the side for which the attorney is arguing. New information may *NOT* be introduced in the closing argument.

Style Points:

1. **Plaintiff's Attorney:** Remember, the plaintiff has the burden of proving the facts in a civil case by a preponderance of the evidence. Therefore, the plaintiff's summary of the favorable evidence presented is extremely important. Be sure to avoid claiming evidence that was not, in fact, presented; similarly, do not emphasize evidence that the defense successfully attacked, except to give a firm response to such an attack. Cite the law clearly and correctly, and make a clear argument regarding how the law requires the judge or jury to rule in the plaintiff's favor.
2. **Defense Attorney:** Summarize all of the evidence presented to weaken the plaintiff's case. Emphasize the inability of the plaintiff to meet the burden of proof, and stress that such inability must clearly lead to a decision in favor of the defendant.



C Simplified Rules of Evidence

So that each party to a trial can be assured of a fair hearing, certain rules have been developed to govern the types of evidence that may be introduced in a trial, as well as the manner in which evidence may be presented. These rules are called the "rules of evidence." The attorneys and the judge are responsible for enforcing these rules. Before the judge can apply a rule of evidence, an attorney must ask the judge to do so. Attorneys do this by making "objections" to the evidence or procedure employed by the opposing side. When an objection is raised, the attorney who asked the question being objected to will usually be asked by the judge to respond. A response should tell the judge why the question was not in violation of the rules of evidence.

The rules of evidence used in real trials can be very complicated. A few of the most important rules of evidence have been adapted for mock trial purposes, and these are presented below.

Rule 1. Leading Questions:

A "leading" question is one which suggests the answer desired by the questioner, usually by stating some facts not previously discussed and then asking the witness to give a "yes" or a "no" answer.

Example: "So, Mr. Smith, you took Ms. Jones to a movie that night, didn't you?"

Leading questions may not be asked on direct examination. Leading questions may be used on cross examination.

Objection: "Objection, Your Honor, counsel is leading the witness." (Opposing Attorney)

Possible Response: "Your Honor, leading is permissible on cross examination," or "I'll rephrase the question." For example, the above question would not be leading if rephrased as "Mr. Smith, where did you and Ms. Jones go that night?" (This would not ask for a "yes" or "no" answer.)

RULE 2. Narration:

"Narration" occurs when the witness provides more information than the question called for.

Example: Question, "What did you do when you reached the front door of the house?" Witness, "I opened the door and walked into the kitchen. I was afraid that he was in the house—you know he had been acting quite strangely the day before."

Witnesses' answers must respond to the questions. A narrative answer is objectionable.

Objection: "Objection, Your Honor, the witness is narrating."

Response: "Your Honor, the witness is telling us a complete sequence of events."

RULE 3. Relevance:

Questions and answers must relate to the subject matter of the case; this is called "relevance." Questions or answers that do not relate to the case are "irrelevant."

Example: (In a traffic accident case) "Mrs. Smith, how many times have you been married?"

Irrelevant questions or answers are objectionable.

Objection: "Your Honor, this question is irrelevant to this case."

Response: "Your Honor, this series of questions will show that Mrs. Smith's first husband was killed in an auto accident, and this fact has increased her mental suffering in this case."

Rule 4. Hearsay:

"Hearsay" is something the witness has heard someone say outside the courtroom.

Example: "Harry told me that he was going to visit Mr. Brown."

Hearsay evidence is objectionable. However, there are a number of exceptions to the hearsay rule and if an exception applies, the court will allow hearsay evidence to be testified to. One exception is permitting hearsay evidence when the witness is repeating a statement made by one of the parties in the case. (For mock trials, other exceptions to the hearsay rule usually are not used.) Another example of an exception is when the witness who made the statement has died or is otherwise unable to testify.

Objection: "Objection, Your Honor, this is hearsay."
Response: "Your Honor, since Harry is the defendant, the witness can testify to a statement he heard Harry make."

Rule 5. Firsthand Knowledge:

Witnesses must have directly seen, heard, or experienced whatever it is they are testifying about.

Example: "I know Harry well enough to know that two beers usually make him drunk, so I'm sure he was drunk that night, too."

A lack of firsthand knowledge is objectionable.

Objection: "Your Honor, the witness has no firsthand knowledge of Harry's condition that night."
Response: "The witness is just generally describing her usual experience with Harry."

Rule 6. Opinions:

Unless a witness is qualified as an expert in the appropriate field, such as medicine or ballistics, the witness may not give an opinion about matters relating to that field.

Example: (Said by a witness who is not a doctor) "The doctor put my cast on wrong. That's why I have a limp now."

Opinions are objectionable unless given by an expert. As an exception to this rule, a lay witness may give an opinion about something in common experience, e.g., "He seemed to be driving pretty fast for a residential street."

Objection: "Objection, Your Honor, the witness is giving an opinion."
Response: "Your Honor, the witness may answer the question because ordinary persons can judge if a car is speeding."

Special Procedures

Procedure 1. Introduction of Documents or Physical Evidence:

Sometimes the parties wish to offer as evidence letters, affidavits, contracts, or other documents, or even physical evidence such as a murder weapon, broken consumer goods, etc. Special procedures must be followed before these items can be used in trial.

Step 1: Introducing the Item for Identification

a. The attorney says to the judge, "Your Honor, I wish to have this (letter, document, item) marked for identification as (Plaintiff's Exhibit A, Defense Exhibit I, etc.)."
b. Attorney takes the item to the clerk who makes the appropriate marking.
c. Attorney shows the item to the opposing counsel.
d. Attorney shows the item to the witness and says, "Do you recognize this item marked as Plaintiff's Exhibit A?".
   Witness: "Yes."
   Attorney: "Could you please identify this item?"
   Witness: "This is a letter I wrote to John Doe on September 1." (Or witness gives other appropriate identification.)
e. Attorney may then proceed to ask the witness questions about the document or item.

Step 2: Moving the Document or Item into Evidence

If the attorney wishes the judge or jury to consider the document or item itself as part of the evidence, and not just the testimony about it, the attorney must ask to move the item into evidence at the end of the witness examination. The attorney proceeds as follows:

a. Attorney says, "Your Honor, I offer this (document/item) into evidence as Plaintiff's Exhibit A, and ask that the Court so admit it."
b. Opposing counsel may look at the evidence and make objections at this time.
c. Judge rules on whether the item may be admitted into evidence.

Procedure 2. Impeachment:

On cross examination, the attorney wants to show that the witness should not be believed. This is best accomplished through a process called "impeachment" which may use one of the following tactics: (1) asking questions about prior conduct of the witness that makes the witness' truth-telling ability doubtful (e.g., "Isn't it true that you once lost a job because you falsified expense reports?"); (2) asking about evidence of certain types of criminal convictions (e.g., "You were convicted of shoplifting, weren't you?"); or (3) showing that the witness has contradicted a prior statement, particularly one made by the witness in an affidavit.

In order to impeach the witness by comparing information in the affidavit to the witness' testimony, attorneys should use this procedure:

Step 1: Introduce the affidavit for identification, using the procedure described in Procedure 1.

Step 2: Repeat the statement the witness made on direct examination that contradicts the affidavit.

Example: "Now, Mrs. Burke, on direct examination you testified that you were out of town on the night in question, didn't you?" (Witness responds, "Yes.")

Step 3: Ask the witness to read from his or her affidavit that part which contradicts the statement made on direct.

Example: "All right, Mrs. Burke, could you read paragraph 3?"

(Witness reads, "Harry and I decided to stay in town and go to the theatre.")

Step 4: Dramatize the conflict in the statements. (Remember, the point of this line of questioning is to demonstrate the contradiction in the statements, not to determine whether Mrs. Burke was in town or out of town.)

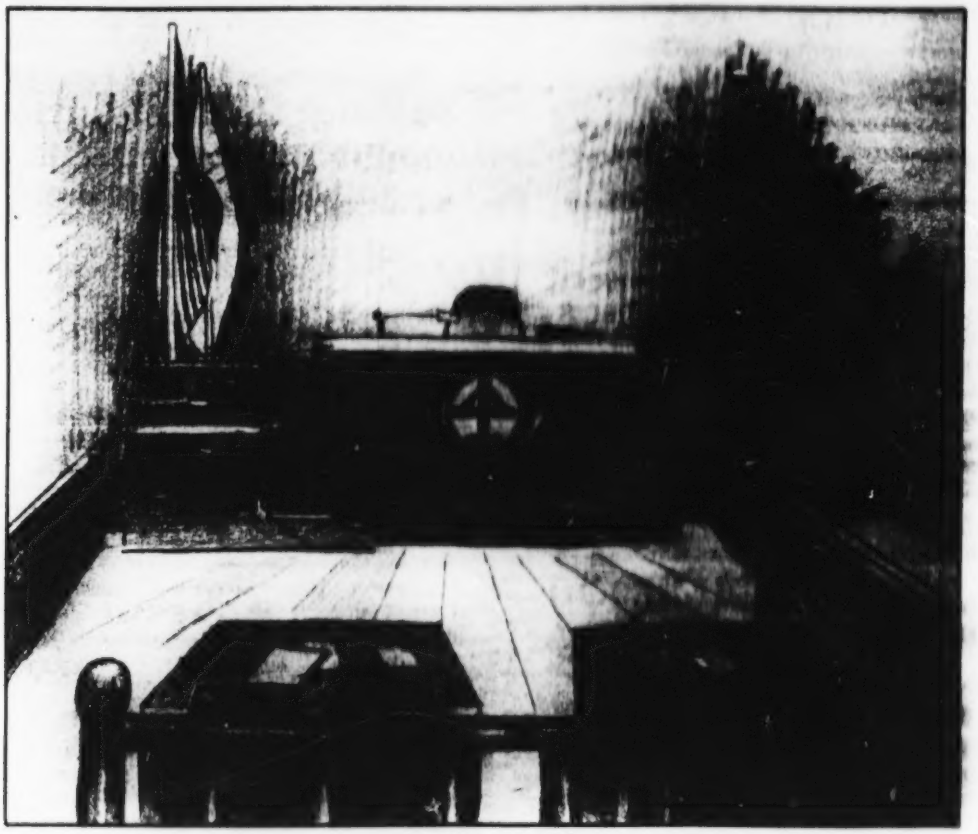
Example: "So, Mrs. Burke, you testified that you were out of town on the night in question. Yet, in your affidavit you said you were in town, didn't you? There seems to be a conflict here, doesn't there? If you can't remember that fact correctly, it's possible you can't remember the others, isn't it?"

Illustrations by Todd Torres

For Mock Trials

Cases are available from Social Studies School Service.

Mock Trial: *Hudson* v. *Daily Metropolis*
(Constitutional Law: Freedom of the Press)



Edited by:
Steve Jenkins
Resource Center for Law-Related Education
St. Louis Bar Foundation

With assistance from:
Nancy L. Eschmann
Edward L. O'Brien
Nancy Switkes

A Publication of the National Institute
for Citizen Education in the Law

Copyright ©1988 National Institute for Citizen Education in the Law, Washington, D.C.

The purchaser of this copy is hereby authorized to reproduce indicated material for nonprofit educational use.
Reproduction for sale is prohibited.

Published and distributed by Social Studies School Service, 10200 Jefferson Boulevard, P.O. Box 802, Culver City CA 90232-0802

This publication prepared through a grant (85-JS-CX-0004) from the U.S. Office of Juvenile Justice and Delinquency Prevention.

MOCK TRIAL: *Hudson* v. *Daily Metropolis*
(Constitutional Law: Father's Right to Know v. Free Press)

Is the First Amendment protection of "freedom of the press" an absolute right? Do newspapers and news reporters have the right to communicate any story without government interference and without revealing the sources of their information? What if a news story vividly describes someone's criminal activity (e.g., a nursing home worker, to whom a reporter promises anonymity, admits giving lethal injections to terminally ill patients)? Should the government be able to demand the name of the nursing home worker? What if a terrorist agrees to give an extensive interview to a news reporter as long as the reporter agrees to keep the terrorist's identity confidential? Can the government demand that the reporter reveal the terrorist's identity? Is a reporter's relation with a news source similar to the confidentiality that exists between a doctor and patient or between a priest and a person giving confession? What are the rights of government and of the press in such situations? Is it acceptable to write about crime without doing something about it?

Rights sometimes compete with other fundamental freedoms, for example, the Fifth and Sixth Amendments clashing with the First Amendment. The right of an accused person to a fair trial by an impartial jury may conflict with freedom of the press and a reporter's responsibility to inform the public about the accused, the crime, and all of those involved. Such pre-trial publicity might jeopardize efforts to secure an impartial jury.

On other occasions, reporters have attempted to maintain the confidentiality of news stories, even when the government wishes to identify and question the source (for example, when highly classified information is published and the government claims the publication threatens national security). Some states have enacted *shield laws* which afford a privilege to journalists to not disclose information (i.e., notes and names of sources) obtained during the course of their news-gathering. Most shield laws provide for exceptions to the confidentiality privileges when there is clear and convincing evidence that the information is needed to protect a constitutional or substantial public interest.

In this case, a parent, Thomas Hudson, is seeking the assistance of the court to order a *Daily Metropolis* reporter, Randy Bates, to reveal information regarding the name of an individual described in a news story because Hudson believes the news source may be the other parent whom Hudson alleges has kidnapped his son. The news account indicates possible child abuse and neglect, and Hudson claims it is in the public interest for a reporter to reveal any information that would help prevent endangering the welfare of a child. Randy Bates contends that there is insufficient evidence to compel the court to issue such an order, and that any attempt by the court to force the revelation of sources would be a violation of free press rights.

Superior Court of Anytown
Family Division

Thomas HUDSON, petitioner	)	
	)	
v.	)	MT. No. 1006
	)	
The *DAILY METROPOLIS*, Randy Bates,	)	
and Max Davis, respondents	)	

Statement of Facts of the Case

All of the parties agree to the following facts:

June Harris and Thomas Hudson were married thirteen years ago. Ten years ago, their son Johnny was born. This past September 10th, June and Thomas were divorced in the County Superior Court. Custody of Johnny was awarded to Mr. Hudson, with weekend visiting privileges granted to June.

On October 12th, as part of the regular weekend visitation, June left Thomas' home with Johnny. She told Thomas that she and the child were going to the zoo. June and Johnny did not return home that evening, and Thomas has not seen or spoken to either his ex-wife or child since that date.

On January 11th, a story appeared in the *Daily Metropolis* describing the case of a mother who had snatched her child from the custodial father and fled the state. The mother and child were in hiding. Identifying characteristics in the news story led Thomas to believe that the mother and child were, in fact, June and Johnny.

On January 14th, Thomas Hudson instituted proceedings in the Family Division of Superior Court to seek enforcement of his custody decree and to seek an order directing June to return the child.

Randy Bates is the reporter who wrote the child-snatching story in the *Daily Metropolis*. Bates and news editor, Max Davis, were subpoenaed by Mr. Hudson to testify at the custody enforcement proceedings regarding the whereabouts of Hudson's ex-wife and child.

The *Daily Metropolis*, on behalf of Bates and Davis, filed a motion not to testify, citing the reporter's privilege to protect the confidentiality of sources based on the state shield law, Revised Statute 1984(a), and the protections of the First Amendment to the Constitution. Thomas Hudson petitioned for a hearing on the issue of the reporter's privilege, as allowed under Revised Statute 1984(b) and (c). This hearing is the proceeding currently before the court.

BEST COPY AVAILABLE

*State Revised Statute:**

Reporter's Privilege

(a) A person ("reporter") connected with or employed by the news media for the purpose of gathering or disseminating news for the general public is presumed to have a privilege to refuse to disclose in any legal proceeding the source from whom any information was obtained, and any other information obtained in the course of investigating a story.

(b) This presumption may be rebutted by clear and convincing evidence showing that:

(1) information held by a reporter is necessary, material,and relevant for the exercise or protection of a Constitutional or substantial public interest; and

(2) all reasonable means to uncover other sources of the information have been exhausted, and that, therefore,

(3) no reasonable means, other than compelling the reporter to disclose the information, exists to obtain the necessary information.

(c) A petition seeking to implement Part (b) of this statute shall be filed in the Superior Court. Upon receipt of such a petition, the Court shall conduct a fact-finding hearing to determine:

(1) whether the defendant may be presumed to have a privilege under Part (a); and

(2) whether the plaintiff is able to assert a Constitutional interest or substantial public policy interest; and

(3) whether the plaintiff is able to demonstrate, by clear and convincing evidence, that the information sought is necessary, material and relevant to the exercise or protection of the Constitutional interest or substantial public policy interest asserted; and

(4) whether the plaintiff is able to demonstrate, by clear and convincing evidence, that no less intrusive means exists to obtain the information sought.

At this hearing, plaintiff Thomas Hudson is seeking to demonstrate by clear and convincing evidence that:

(a) there is a substantial public policy interest in his finding and resecuring custody of his child;

(b) that he has a due process interest in the custody proceedings that he has instituted in the Superior Court;

(c) that Randy Bates has information concerning the location of his ex-wife and child that is necessary, material, and relevant to the protection and exercise of his interest cited in (a) and (b), *supra*;

(d) that all other sources of the information sought have been exhausted, and no less intrusive means are available to obtain the information.

Therefore, the plaintiff seeks to rebut the presumption of a reporter's privilege asserted by the defendant, and to compel the reporter to produce information for the custody proceedings.

Defendants Randy Bates and the *Daily Metropolis* answer that:

(a) the evidence presented by the plaintiff is not clear and convincing, and therefore insufficient to rebut the privilege asserted;

(b) even if the evidence is clear and convincing, thus rebutting the statutory protection, the statute is unconstitutional in light of the fundamental right to Freedom of the Press guaranteed by the First Amendment to the Constitution.

Therefore, the respondent asks the Court not to order the reporter and newspaper to produce the information requested.

---

*This statute is hypothetical based on some actual state shield laws and court opinions.

Parties and Witnesses

THOMAS HUDSON, plaintiff **Age:** 34

4522 Landover **Occupation:** Systems Analyst

JACKIE MILLS, witness for the plaintiff **Age: 30**

3204 Bunker Hill Road **Occupation:** Social Worker

RANDY BATES, defendant **Age:** 23

204 South Mill Street **Occupation:** Newspaper Reporter

MAX DAVIS, witness for the defendant **Age: 52**

1898 Fourth Street **Occupation:** Newspaper Editor

Documentary Evidence

1. Affidavit of Thomas Hudson
2. Affidavit of Jackie Mills
3. Affidavit of Randy Bates
4. Affidavit of Max Davis
5. Order of Custody--Superior Court
6. Newspaper Article: "Mother and Child Hide in Fear"

NOTE: The authenticity of the documents may not be questioned or disputed.

DOCUMENT NO. 1
Affidavit of Thomas Hudson

My name is Thomas Hudson. I am a systems analyst with Automated Data Corporation.

June Harris and I were married thirteen years ago. We have one child, Johnny, age 10. June and I divorced this past September. She initiated the divorce action, but custody of Johnny was awarded to me, with visiting privileges for June.

I loved June, and I did not feel any ill will toward her. However, she had, and still has, a lot of problems, particularly with drinking. While we were together, her drinking got out of hand on several occasions, and she seriously abused Johnny while she was drunk.

Two years ago, after one of her worst drinking bouts, I convinced her to go live with her mother until she straightened out. Johnny stayed with me. I sent her whatever money she asked for. Johnny and I visited her once a month.

One year ago, June asked us to stop visiting. She said she'd call when she wanted to see Johnny, but she never did. Then, after almost a year of no contact, June filed for divorce, and sought custody of Johnny. I couldn't let that happen. June had a history of alcoholism and child abuse, and she had abandoned both of us for a year.

Ms. Mills, the social worker, investigated the case and presented a thorough report to the judge. The divorce was granted, and the judge determined that it was in Johnny's best interest to be in my custody. June was allowed weekend visitation rights.

In October, on her second or third visit, June told me that she was taking Johnny to the zoo. I never saw either of them again. When I realized that she wasn't bringing him back, I imagined all kinds of horrible things happening to my son. I couldn't sleep for weeks or

BEST COPY AVAILABLE

concentrate on work. My boss finally let me take December off to search for them, but nothing turned up.

Then, in early January, the story appeared in the *Metropolis*. I just knew that the story was about June and Johnny: the scar on his chin, a result of one of her drunken attacks on him when he was a toddler; the scar on her arm, not my abuse as she claimed in the story, but her own clumsy attempt at suicide one day when she put her arm through a window.

As I read the story, it suddenly hit me: those cigarette burns! They're new! Johnny didn't have a mark on him when he left. She's torturing my son, keeping him confined in some shabby room.

I went right down to the newspaper to see that reporter. Both Bates and the editor refused to talk to me.

I didn't know where else to turn, so I called the police. I was referred to the Child Protection Unit. They had also read the story and were already at work on the case. I was happy to cooperate with them: providing pictures, names of all of June's friends and relatives, and a description of her usual patterns.

I also began proceedings, in the hope that the court can help me find my son and return him to my custody where he belongs.

The police and I have done everything we humanly can to find out where June and Johnny are. My son's life and health are in danger and we've already lost valuable time. The Metropolis has no right to endanger any child's life for the sake of some technical legal principle. It seems all they care about is selling newspapers.

_____

/s/Thomas Hudson

Date: _____

DOCUMENT NO. 2
Affidavit of Jackie Mills

My name is Jackie Mills. I am a social worker and a child custody investigation specialist with the County Superior Court.

On this past August 9th, I was assigned to the Hudson case. I first tried to interview June Hudson at her mother's home on August 11th. She was very hostile toward me and refused to answer most of my questions. I suspected that she had been drinking.

I met Thomas Hudson on August 13th, and interviewed him at his home. Actually, Mr. Hudson and I had met once before through some mutual friends. During the interview, I had the opportunity to meet Thomas' son, Johnny, and to observe their relationship. As a result of these interviews and observations of the family, I recommended to the Court that Thomas be given full legal custody of Johnny. My findings and recommendations were incorporated into the custody order of September 10th.

I recommended that June be allowed only very limited, closely-guarded visiting privileges. I've become all too familiar with the pattern of the child-snatching parent. That parent doesn't care about the child's welfare. The typical child-snatcher uses the child as a weapon against the other parent. Given June's history of drinking and abusive behavior, and her anger toward Thomas, I felt she might try this child-snatching.

From my experiences with child custody and child-snatching cases, I believe Johnny is in extreme danger. The newspaper confirms my fears. A careful reading shows that Johnny never once responded positively to June. He can't seem to get far enough away from her. He wants his father desperately.

Even more alarming, Johnny has been horribly abused again. Johnny did not have any cigarette burns on him when June took him. I had visited Thomas and Johnny on the previous day. I was out with them for an afternoon swim in a neighbor's pool. Johnny did not wear a shirt, and I did not observe any marks on him. June smokes like a chimney and I bet the burns are from her. Thomas does not smoke.

The child described in Bates' article is not the full-spirited child I saw last October. He seems listless and fearful. Johnny had been a bright, articulate, fun-loving child. Now he's locked away somewhere, suffering from physical and psychological abuse. He's being kept out of school, not allowed to associate with children his own age. He is withering away and he must be found immediately.

I am receiving a standard $300.00 expert witness fee to testify in this case, and I am going to use this money to help Thomas hire a private investigator to find Johnny. The newspaper should share this vital information in order that we might save Johnny.

_____

/s/Jackie Mills

Date: _____

DOCUMENT NO. 3
Affidavit of Randy Bates

My name is Randy Bates. I have been a reporter for the *Daily Metropolis* for two years. My editor at the *Metropolis*, Max Davis, told me to investigate the child-snatching issue. I covered city council and congressional hearings on proposed legislation in this area.

Before this article, I had never actually talked with someone who had snatched their child, but I know that secrecy is very important for the parent who is taking the child. The "snatching" parent is afraid that the other parent will take the child away again. The last thing these parents want is publicity.

Max asked me to try to get a story from a "snatching" parent. I investigated every possibility but with no luck. My sources acted like I was crazy for trying to get this kind of interview.

Breaks come when you least expect them. I was sitting in a new bar one night, telling a friend about my frustration with this investigation. A woman, sitting alone next to me, appeared to be eavesdropping. This woman wrote something on a napkin, pushed it over to me, and walked out.

I read the message on the napkin. It said to call a pay phone number at a certain time the next day.

The next day I got a call at the *Metropolis*. The caller identified herself as the person from the bar. She said she could give me a real child-snatching story. She wanted me to guarantee her absolute secrecy. She was concerned that any publicity might result in her husband's finding her hiding place.

BEST COPY AVAILABLE

I asked Max to pick up the phone at his desk. With Max on the line, I asked her to explain what information she had for us, and why secrecy was so important. She was in hiding with her son, whom she had taken from the custody of her ex-husband. She was willing to risk exposure because she wanted people to know that she and her child were alive and well. She wanted the public to understand her side of the case, but would not go any further with us, unless we gave an absolute promise of confidentiality.

Max and I quickly conferred and decided that we should pursue the story. We promised secrecy for the woman's identity and her location. She seemed satisfied with our promise, and told me where and when to meet her.

The place where we met was sparse, but clean and neat. The child appeared to be a little shy, but well-dressed, and looking healthy and well-fed. I did not observe any immediate danger to the child. I did observe scars on the child. However, all of the scars appeared to be healed and likely inflicted prior to the child snatching.

The woman, Joan, conversed with me in a calm, self-possessed manner. She trusted me to tell her story and to preserve her privacy. I fully intend to live up to this trust, both for the sake of my source, as well as for my own career as a journalist.

_____
/s/Randy Bates

Date: _____

DOCUMENT NO. 4
Affidavit of Max Davis

My name is Max Davis. I am the veteran city editor for the *Metropolis*. In September, I assigned Randy Bates to investigate parents who were hiding children they had snatched from custodial parents. Randy has developed significant expertise on the issue of child-snatching which has become an epidemic around the country.

After months of fruitless investigation, Randy stumbled upon a source. One morning Randy asked me to pick up my phone. Randy was talking to a woman, who claimed to be a parent who had snatched her child and was now in hiding. This woman expressed an interest in talking to Randy, but only if she could be promised absolute secrecy.

A promise of confidentiality, particularly in this kind of sensitive family case, is not easily given. Randy and I discussed our options: we could refuse to promise secrecy and thus lose the story; or we could promise secrecy, and take the risk that we would find out information that would make it very hard for us to keep our promise of confidentiality. We knew that our promise could be threatened by two situations: a court could order us to break our promise; or we might find the situation so extreme, for example, if the child were clearly abused, that our consciences would not tolerate keeping the secret.

Randy and I agreed that our obligation as journalists was to pursue this critical story. The public needs to know more about this problem. We assured the woman that her identity and location would not be revealed. She then told Randy where to meet her. Randy's case is not unique. As an editor, I have made countless decisions about confidential sources over the past five years. As a reporter, I was involved in many such choices myself. Confidential sources are essential to maintaining a free press. If reporters did not have the ability to promise secrecy, few people would give us vital information, and our stories would not be fully written.

_____
/s/Max Davis

Date: _____

DOCUMENT NO. 5
Superior Court

Case: Hudson v. Hudson — No.: 9-86

Finding of Facts and Order of Custody — Date: September 10 — Judge: Higgins

Having awarded a divorce to the parties in this case, the Court is now asked to determine which party shall have custody of the child produced during the marriage. After a hearing on the custody issue, the Court finds these facts:

(1) June Harris and Thomas Hudson were married thirteen years ago, and have one child, Johnny, age 10. Fifteen months ago, at the urging of her husband, June voluntarily separated herself from Thomas and Johnny, and went to live for a temporary period with her mother. The purpose of this separation was to assist June in securing and maintaining treatment for an alcohol problem. During the first six months of this separation, June saw Thomas and Johnny on a regular, weekly basis. After those first six months, June told Thomas to stop visiting. For the next nine months, Thomas and Johnny had no significant contact with June. This past May, June Hudson filed for divorce from Thomas Hudson, and sought custody of Johnny.

(2) As a result of the Social Services investigation into the households involved in this case, and into the history of the family, the Court also finds that during the years of June's residence with the family, there were several isolated instances in which she did not provide proper care for Johnny. While we are not here engaged in neglect or abuse proceedings and so will not use those terms in these findings, the court finds that on several occasions June slapped, cut, and otherwise hurt her child while he was in her care; she was apparently drinking on those occasions.

(3) The court also finds that during the fifteen months in which Johnny has been in his father's sole custody, he has been well cared for, and that Thomas and Johnny enjoy an excellent relationship. The Court also takes notice of the Social Services report which indicates that Johnny prefers to live with his father.

Under state law, the best interests of the child is the standard by which custody decisions must be made. The fitness of one parent, the length of custody with another parent, the health of the family relationships, the home and community circumstances, and the preferences of an older child contribute to the difficult task of making such a decision.

In this case, the Court finds that Johnny is already in the best possible care, that June is not a fit custodian at this time, and that Johnny's best interests will be served by awarding permanent custody to Thomas. June may visit privately with Johnny on one

BEST COPY AVAILABLE

day of each weekend, for an eight-hour period, during which she may take him on excursions.

So ordered.

Bernadette Higgins

Bernadette Higgins, Judge
September 10

DOCUMENT NO. 6
Newspaper Article

Daily Metropolis
January 11

"MOTHER AND CHILD HIDE IN FEAR"
by Randy Bates

"I'm no criminal. I'm not a kidnapper. I just couldn't leave my child with that monster, no way. Look what he did to Johnny."

Joan lifted the back of her son's green and blue striped shirt to reveal an ugly patch of scars, including cigarette burn marks. Johnny, 10 years old, wiggles away uncomfortably, and squirms deep into a corner of the tattered couch. His eyes are tired and fearful.

Joan, 30, fumbles for another cigarette. She, too, has scars: a long line runs up her forearm and disappears into the rolled sleeve of her shirt. "He got me good with a knife one day," she comments when asked about the scar. Like Johnny's, not all of Joan's scars are visible.

Joan is a child-snatcher. Several months ago, she lost custody of her child to her ex-husband. He was able to convince the court that she was not a fit mother. But his victory, she claims, was entirely based on lies and distortions.

"He got the social worker to report to the court that I was the one who was abusing Johnny, and that I was drinking. After all the torture he inflicted on Johnny and me, this lie was the cruelest thing of all. He was so smooth at the hearing, I just about went out of my mind. I didn't have a chance."

"Look at this," says Joan as she reaches over to Johnny and lifts the hair over his left ear. Again, Johnny squirms away with a defiant "No!" but not before revealing a pathetic stump of an ear. "He did that when Johnny was just a poor, helpless baby," Joan says softly.

Joan claims that her ex-husband physically and sexually abused their child and her. After the custody award, she began to make plans to seize the child and escape from the state's jurisdiction. Friends of hers told her to bring the child to a state where courts would be willing to hear her case and award her custody.

Last October, Joan finally made up her mind to go ahead with her plans to take Johnny away from her ex-husband. It was the cigarette burns that convinced her.

"I got there one Saturday, for my usual weekend visit. I was helping Johnny get changed, to take him out to the zoo. When I took off his shirt, I saw the marks. I knew then that I had to get him out of there. I didn't say anything to him because I didn't want to make him upset. In fact, we did go to the zoo as I had promised. Then we went over to my girlfriend's for dinner and she put us up that night. We've been around quite a lot since then, haven't we Johnny?" She patted her son's arm and smiled at him; he squirmed away, slid off the couch, and walked over to the window.

"He just doesn't understand why I can't let him outside," explains Joan. "He wants to play, and go to school with the other kids, but I just can't risk it."

Joan intended to seek a new custody decree. But fear that her ex-husband may discover her and Johnny, and snatch the child back, or even seriously injure both of them, has prevented her from coming out of hiding. She would only talk to this reporter after elaborate precautions had been taken to ensure that her identity and location would not be revealed.

"He'd come here and kill me, I know he would. He's that kind. And he'd kill Johnny too. You can't let him even guess that I'm here."

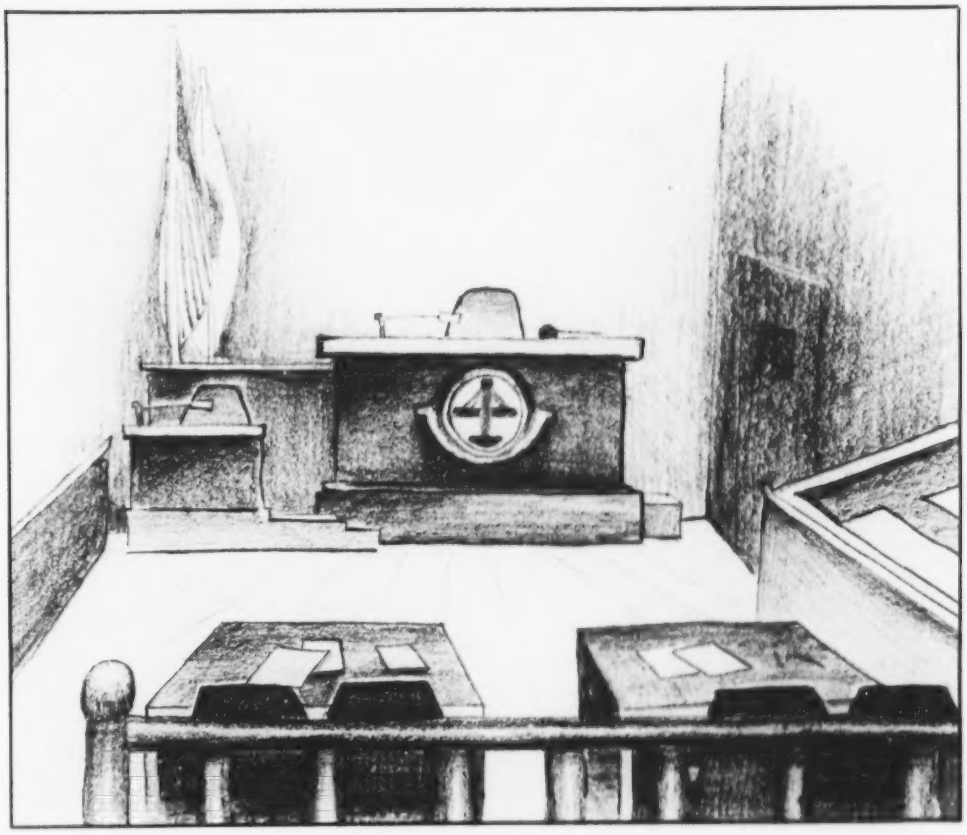
The story of Joan, Johnny, and the anonymous father out there searching for them, is not unique. Nationally, thousands of parents and children are caught in this tragic game of hide-and-seek.

The object of this struggle, the child, sits caught in the middle, wide-eyed, fearful, bored, confused. I asked Johnny if he'd like to see his father again some time.

"Sure, he said with the first hint of a smile all afternoon. "That would sure be nice. And then he turned back to stare out the window at the children playing in the schoolyard across the street.

BEST COPY AVAILABLE

Mock Trial: *State* v. *Thomas Morton* (A Criminal Trial for Theft)



Written and Edited by:
Margaret E. Fisher, Esq.
University of Puget Sound Law School

With assistance from:
Edward L. O'Brien
Nancy Switkes

A Publication of the National Institute
for Citizen Education in the Law

Copyright ©1988 National Institute for Citizen Education in the Law, Washington, D.C.
The purchaser of this copy is hereby authorized to reproduce indicated material for nonprofit educational use.
Reproduction for sale is prohibited.

Published and distributed by Social Studies School Service, 10200 Jefferson Boulevard, P.O. Box 802, Culver City CA 90232-0802
This publication prepared through a grant (85-JS-CX-0004) from the U.S. Office of Juvenile Justice and Delinquency Prevention.

MOCK TRIAL: *State* v. *Thomas Morton*
(A Criminal Trial for Theft)

Owning or having a legal right to possess an object gives a person a right over all other persons to that object. For instance, if a man owns a horse, no other person has the right to that horse. This demonstrates the idea of private property, a system in which individuals own their own objects. Some societies use a system of communal ownership, in which the community owns everything together and no single person has the right to own any specific piece of property. Other societies have some combination of these systems.

Our legal system in the United States operates as a private property system. Society punishes people who wrongfully take property that belongs to others. Theft is unlawfully taking control of another's property with the intent to steal it. The intent to steal means that the thief has as his or her purpose to permanently deprive the owner (or person with lawful possession) of their possession of the property. Usually, the thief takes control of the property by removing the property from the posession of the owner. Shoplifting is a common example of theft. In this instance, goods are unlawfully taken from a shop (that is, without paying) with the intention of permanently depriving the shopkeeper of the goods.

In a case involving a criminal charge for theft, the judge or jury must find by evidence *beyond a reasonable doubt* that the accused person unlawfully took something that can be stolen with the *intent* to permanently deprive the owner or the person who has lawful possession of his or her ownership or possession.

In the following case, a juvenile (16 years old) is accused of the crime of theft. In most states those under 18 years of age accused of crimes (unless the crimes are very serious, e.g., rape or murder) are petitioned as juvenile delinquents. The same law applies to juveniles in that the elements of the crime (in this case, theft) must be proved beyond a reasonable doubt for the juvenile to be declared a "delinquent."

Superior Court of Anycounty, Juvenile Division

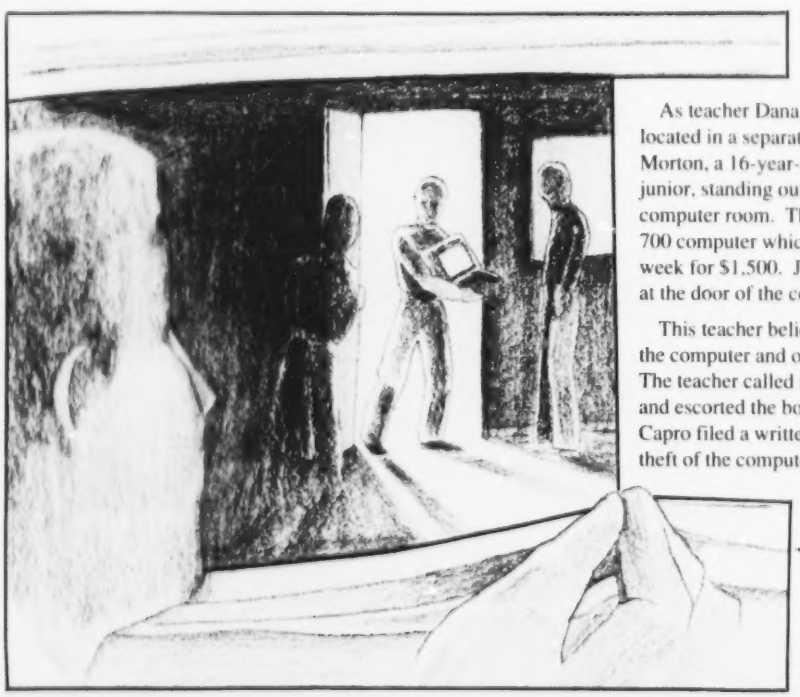
STATE	)	
	)	
v.	)	MT. No. 1004
	)	
THOMAS MORTON, Respondent	)	
	)	

Statement of Facts of the Case

All of the parties agree to the following facts:

Thomas Morton, his elder brother J.D. Morton, and John Medina were discovered attempting to leave the school grounds of Mountain Top High School with a computer belonging to the school. Thomas Morton is being charged with theft of this computer. His older brother J.D. Morton pleaded guilty to theft on October 8 and received a sentence of probation. John Medina has not been charged with a crime.

On the night of September 15 at approximately 8 p.m., the high school teacher Dana Capro, returned to Mountain Top High School to make sure that the computer room was locked. He had left school earlier that Friday afternoon with an emergency, having to transport to the clinic a student who had had a seizure during school hours.



As teacher Dana Capro approached the computer room, which is located in a separate building next to the cafeteria, he saw Thomas Morton, a 16-year-old freshman, and John Medina, a 17-year-old junior, standing outside approximately ten feet from the door of the computer room. They were each holding one end of a Multitech 700 computer which had been purchased by the school the prior week for $1,500. J.D. Morton, an 18-year-old senior was standing at the door of the computer room with his back to the other two.

This teacher believed that the students were attempting to steal the computer and ordered the boys to accompany him to the office. The teacher called the police who arrived about 45 minutes later and escorted the boys and teacher to the police headquarters. Dana Capro filed a written complaint, charging the three young men with theft of the computer.

Statement of the Law

Theft is the unlawful taking of something that can be stolen with the intent to permamently deprive the owner or the person who has lawful possession of his or her ownership or possession.

Possible penalty: If Thomas is found guilty, the Court may order that he be placed on probation, put in a group home or community treatment program or commited to a state institution for juvenile delinquents.

To obtain a guilty verdict, the prosecutor must prove beyond a reasonable doubt that Thomas Morton:

1. took
2. a computer lawfully owned by Mountain Top High School
3. without permission from the school and
4. that he intended to deprive the school of the computer permanently.

Thomas Morton does not dispute that he took a computer lawfully owned by Mountain Top High School without permission from the school. His defense is that he lacked the required intent in that:

1. he did not intend to deprive Mountain Top High School of its computer. In other words, he reasonably believed he took the computer with the permission of a Mountain Top High School teacher.

Witnesses

Witnesses for the Prosecutor:

1. Dana Capro, Computer Sciences Teacher at Mountain Top High School
2. John Medina, accomplice witness

Witnesses for Respondent:

1. Thomas Morton, Accused
2. J.D. Morton, Accused Person's Brother

Physical Evidence

1. Multitech 700 computer, marked with Mountain Top High School serial number

Documentary Evidence

1. Affidavit of Dana Capro
2. Affidavit of John Medina
3. Affidavit of Thomas Morton
4. Affidavit of J.D. Morton

NOTE: The authenticity of the documents may not be questioned or disputed.

DOCUMENT NO. 1
Affidavit of Dana Capro

My name is Dana Capro. I received my teaching certificate from our state university, and have now been employed by Mountain Top High School for five years.

I began teaching computer science two years ago when the school was able to purchase four computers. They were all the old model and I kept pressuring the school to buy the newer machines because our students need the best training possible. After begging and begging, this year the school was allocated $1,500 to purchase one new Multitech 700, a state-of-the-art computer. We had a special place made for it in the computer room. It arrived on September 8 and we were so proud. As the computer teacher, I am the only one who could give permission to loan out our computer and I had never done that before.

Then these delinquents tried to steal it. They have caused all kinds of trouble. Ever since they stole that computer, it's been locked up at the police station as evidence and my students still haven't been able to use it.

What happened on September 15 is this: I was conducting my afternoon study period when a young woman student started having an epileptic seizure. There was no medical assistance available at the school, so I made arrangements to take her to the clinic. I put one of the more responsible students in charge of the class and left. It took until 7:30 that night at the clinic to get her all settled. I headed back to the school so that I could lock the computer room, as I normally do at the end of the school day.

Well, as I walked up to the computer room, I saw some figures in front of the school. It's about 8 o'clock and it's dark. So I shout out, "Who's there?" A boy who I recognize as Thomas Morton said "Oh, it's just us coming to borrow the computer." I see then that Thomas Morton, a freshman at Village High School, is holding one end of our brand new computer and John Medina, a junior in my computer class at Mountain Top, is holding the other end. At the time, I thought that Thomas seemed quite open and natural about having the computer, but I guess he's just a very crafty individual.

There was a third boy there, at the door of the computer room. He must have been trying to lock the door behind him. Well, I ordered all three of those boys to the office. I called the police. While we were waiting, I noticed that Thomas Morton was crying; he looked pretty scared.

During the 45 minutes it took the police to get there, I heard the two brothers talking. It turned into an argument. Thomas said, "You told me that the teacher said you could have the computer for the weekend." Then J.D. said, "Shut up, Thomas, you were in this from the beginning. You knew this was for your trip money. You are the one who told Mom not to worry about the money."

/s/ Dana Capro

DOCUMENT NO. 2
Affidavit of John Medina

My name is John Medina and I'm 17 years old. I'm a junior at Mountain Top High School. This is the first time that I have ever been in any trouble, and I'm sorry. However, I will stand up and admit that I was involved.

I was a good friend of J.D. Morton. We used to play basketball together after school. The only thing that I never liked about being with J.D. was that his little brother, Thomas, used to follow J.D. everywhere. Thomas annoyed me by trying to act like a big shot when he was only a little kid.

One day just before school began, it was August 14, I was talking to J.D. and Thomas was there as usual, and I told J.D. about the new computer that the school was getting. I was going to take the computer class in my junior year, and would have a chance to use it. I explained that this computer cost $1,500.

Thomas, who had been unusually quiet, said, "Maybe that's how I can get my trip money." A few weeks later on September 11th,

BEST COPY AVAILABLE

J.D. says he has a plan for making some easy money, and talks me into agreeing to steal the computer. Since I'm in the computer class, I was supposed to examine the classroom and see how we could do it.

Well, on September 15 this girl in class goes into a fit and the computer teacher leaves to take her to the clinic. I saw this was a perfect opportunity to get the computer and I talked to J.D. He said we should come back to the school about 7:45 that night, and if the building was still open, we'd get the computer. He didn't mention Thomas at all, so I was really surprised when I saw Thomas there that night.

I was pretty nervous, and none of us said much. We walked right in the room and Thomas and I picked up the computer and went outside with it. J.D. was closing the door when Mr. Capro appeared. I don't remember anybody saying anything, except that the teacher ordered us to the office where the police were called.

Thomas was crying like a baby. He and J.D. got into an argument, but I didn't really hear what they were saying. I figured that now Thomas was sad because he wasn't going to get his trip money and he was going to jail. If J.D. says now that Thomas wasn't in on it, it's only because he's trying to protect his little brother.

/s/ John Medina

DOCUMENT NO. 3
Affidavit of Thomas Morton

My name is Thomas Morton and I am 16 years old. I have been a freshman at Village Secondary School. I've received straight A's every year and am at the top of my class.

I admit that I was there at the school on September 15th, but I sincerely thought that we were merely borrowing the computer with the school's permission. My brother, J.D., is a senior at Mountain Top High School. He took the computer class in his junior year.

J.D. knew that the school was getting a new computer that he wanted to learn how to use. I heard John Medina tell him that one day during the summer. Anyway, on Friday, September 15, J.D. came up to me after school and said that we needed to go down to the school later that night to borrow the new computer for the weekend, so that he could practice on it. He said that the computer teacher had agreed to let him borrow it, provided he got it back early Monday morning in time for school.

I said sure that I'd go with him to get the computer. I've been taught to respect my brother and would help him do anything. We arrived at the school, and just like J.D. had said, the teacher had left the door open for us. Well, after the teacher came, and said he was calling the police, I saw that something was really wrong. I was frightened. I asked my brother what was going on. He said we were going to get charged with stealing the computer.

I yelled at him and told him I wasn't guilty of anything. He must have been scared too, because he then said that I knew that we were stealing that computer so I could have my school trip money. We had an argument about that, but I don't really remember what I said.

I was worried about my school trip money to the Capitol because my mother had told me on August 12 that I would not be able to go because she didn't have the money. I would do almost anything to go to the Capitol, but I wouldn't steal.

/s/ Thomas Morton

DOCUMENT NO. 4
Affidavit of J.D. Morton

My name is J.D. Morton and I am 18 years old. I was a senior at Mountain Top High School, before I was expelled for stealing the computer.

My mother had told Thomas that he would not be able to go to the Capitol because she could not afford it. I wanted to help my brother out, so I thought up this whole plan to steal the computer. John Medina, who was in Mr. Capro's class, figured out where we could sell the computer so we could get enough money for the school trip and some for him for helping us out.

Thomas has never taken computer classes and he doesn't even attend Mountain Top High School, so he wouldn't know that the school doesn't lend out computers. On Friday, September 15th John came up to me after school and said that the computer teacher had left on an emergency, which meant that the building would be open and that would give us a chance to get the computer after it got dark.

Thomas saw me around 6 p.m. and decided to stay with me. When I couldn't get rid of him, I made up this story that Dana Capro had agreed to lend me a computer for the weekend. Thomas said he'd come to help me get it. So we went to the school together and met John. I was just closing the door when Dana Capro appeared.

After the teacher took us to the Principal's office, Thomas and I had an argument. I admit I said that Thomas had been in the plan to steal the computer all along, but I just said that because I was afraid. I realized that I was in big trouble and I was frightened. But the truth is that Thomas believed that I had permission to take the computer.

/s/ J.D.Morton

Mock Trial: St. Clair v. St. Clair (A Child Custody Hearing)

Edited by:

Patricia McGuire, Esquire
Georgetown University Law Center

With assistance from:
Edward L. O'Brien
Lee Arbetman
Vivian H. Mills
Andrew Pannell

A Publication of the National Institute
for Citizen Education in the Law

Copyright © 1984 National Institute for Citizen Education in the Law, Washington, D.C.

The purchaser of this copy is hereby authorized to reproduce indicated material for nonprofit educational use. Reproduction for sale is prohibited.

Published and distributed by Social Studies School Service, 10200 Jefferson Boulevard, Culver City, California 90232

MOCK TRIAL: St. Clair v. St. Clair
(A Child Custody Hearing)

As the introductory section on "The Trial Process" in the **Street Law Mock Trial Manual** explains, the purpose of a civil trial is to solve a dispute between individuals when they cannot reach an agreement in any other manner. Many disputes between members of families must finally be solved through the trial process. Family disputes pose some of the law's hardest issues, and child custody cases are among the most difficult in the family law arena.

When a husband and wife decide to end their marriage by obtaining a divorce, they are faced with a number of decisions concerning their property and their children. In some cases, they may reach agreements about the division of their property and the custody of their children without going through a trial. A judge will review this agreement before it can be made final, and the judge will pay particular attention to any agreement made concerning children.

Sometimes, parents who are going through a divorce cannot reach an agreement about which one will have custody of the children, or about visitation rights of the parent who does not have custody. In such cases, a judge in the family court will conduct a "custody hearing." Such a hearing follows the same steps and procedure as other types of trials. However, a jury is not used. Moreover, because the issue to be decided is not whether one of the parties is right or wrong, but rather which party will be made responsible for the care and raising of a child, the nature of a custody hearing may be somewhat different from other civil trials. The judge will want to learn as much as possible about both parents, about their plans for the child, about the child and the whole family. For this reason, the application of the rules of evidence and other formal procedures may be less strict than in a more adversarial type of trial.

To make a custody decision, the judge must decide what arrangement will be in the best interests of the child. The judge might decide to award custody to the father or mother, with certain visitation rights for the parent who does not get custody. The judge might also consider a "joint custody" arrangement, through which the child would spend equal portions of time with each parent. Joint custody relies heavily on the cooperation of the parents.

The judge determines the "best interests of the child" by looking at a number of factors, including:

(1) age and sex of the child;
(2) economic and emotional ability of each parent to raise the child, including past performance in caring for the child;
(3) environment, including physical condition of the home in which the child might live; school arrangements, etc.;
(4) desire of the child to remain with a particular parent, a very strong factor if the child is over a certain age, e.g., twelve.

Superior Court of Anytown
Family Division

Basil ST. CLAIR, plaintiff)
)
v.) MT. No. 1001
)
Brenda Stark ST. CLAIR, defendant)

Statement of Facts of the Case

All of the parties agree to the following facts:

Basil St. Clair and Brenda Stark St. Clair were married in August, 1971. Brenda had one son, Jason, by a previous marriage. During Brenda and Basil's marriage, they had another child, Edward, who was born with a hearing disability.

In May, 1981, Brenda voluntarily separated from Basil. She left her two sons with Basil while she went to live with her mother. In October, 1981, Brenda and Basil entered into a formal separation agreement, which is included in the documents for this case.

During the period of their separation both Brenda and Basil dated other people. Basil has announced his intention to marry Winnie Canyon as soon as he obtains a divorce from Brenda.

In November, 1982, Basil filed for divorce, and asked for custody of the children. Brenda consented to the divorce, but she contests Basil's petition for custody of the children. Assume a hearing is being held in the Family Court of Anytown in the Spring of 1983 to determine who shall have custody of Jason St. Clair, age 12, and Edward St. Clair, age five.

Statement of the Law

The Family Court judge will make a decision in this case based on the law of the State of Anywhere which reads as follows:

Anywhere Statutes §83-8001: In cases involving the custody of children after a divorce, the judge shall apply the "best interests of the child" standard. In reaching this decision, the judge may consider, but is not limited to, the following factors:

(1) Age, sex of the child;
(2) Emotional and economic stability of each parent;
(3) Physical condition of the respective homes;
(4) Schooling arrangements proposed;
(5) Preference of child over age 12.

The judge may also consider, but is not bound by, any prior agreements made by the parents. The judge may consider any type of custody arrangement, including joint custody. If it is at all possible, siblings should be kept together.

Parties and Witnesses

BASIL ST. CLAIR, plaintiff **Age:** 34 **Occupation:** High School Teacher and Football Coach
1430 Edgewood Place

JASON ST. CLAIR, witness for the plaintiff **Age:** 12
1430 Edgewood Place

BRENDA STARK ST. CLAIR, defendant **Age:** 36
2467 Walnut Street
Occupation: Management Consultant

ARTHUR BAXTER, witness for the defendant **Age:** 43
1978 Plumrose Court **Occupation:** Teacher

Documentary Evidence

1. Affidavit of Basil St. Clair
2. Affidavit of Jason St. Clair
3. Affidavit of Brenda Stark St. Clair
4. Affidavit of Arthur Baxter
5. Separation Agreement

DOCUMENT NO. 1
Affidavit of Basil St. Clair

My name is Basil St. Clair. I am the plaintiff in this case. I am asking the Court to grant me permanent custody of my two sons, Jason and Edward.

When my wife Brenda left our home over one year ago, she left our children, Jason and Edward, in my custody. Several months after she left, she signed an agreement formally leaving them in my care.

I have provided my sons with the sort of stable, disciplined home they need. The boys simply would not get this kind of care with Brenda, who is extremely unstable as shown by the way she just up and left me with the kids. Her job requires her to travel at times. Her current boyfriend would be completely unfit to take care of my sons. He's some kind of artist, and all he does is drag Brenda around to poetry readings and art shows. I let Jason spend a weekend with Brenda and Bert once, and the boy came home with all kinds of tales of weird parties at art galleries and that sort of nonsense. I let Jason help me out with football practice after school, and we go hiking and camping; that's the kind of activity a parent should provide for a child.

A few months after Brenda left, my good friend Winnie Canyon moved in to help me with the boys. I love her, and she's been a great support. Her 10-year-old son Charles is like a son to me, and he's best friends with Jason.

I've recently enrolled Edward, our 5-year-old, in a special program for hearing disabled children, and he seems to be doing quite well. Winnie and I attend special training sessions for parents and guardians of hearing disabled children once a week. Brenda never could cope with Edward's problem; she used to yell at him and slap him when he seemed not to hear what she was telling him to do.

Another reason the children should be left in my care is the fact that they really want to stay with me. Jason is particularly able to express himself on this subject. We've really become much closer since he was arrested for shoplifting four months ago. I really hit the roof when I got the call from the police; I'd warned him about hanging out with the particular group of kids that was involved, but he thought he could get away with ignoring my orders. Well, I really straightened him out after that little incident, and we've been very close since then.

Financially, I'm in good shape. Between my salary for teaching and extra money for coaching and a few odd jobs I do around the community, I earn about $27,000 per year.

Basil St. Clair

/s/Basil St. Clair

DOCUMENT NO. 2
Affidavit of Jason St. Clair

My name is Jason St. Clair. I want to live with my Dad. I want my brother Eddie to stay with me, too, and I know he wants to stay. Dad and I usually get along pretty well, except for times when he makes me do stuff that I really hate, like working out with the football team. But I don't complain because he gets really mad and calls me a "wimp" if I don't do it. I like it when we go hiking together, because that's when we really get time to talk. It's more fun than going out with Bert, the guy Mom wants to marry, because all he does is take me to boring art galleries and poetry readings.

Mostly I want to stay with Dad because I know he cares a lot about me, and I'm not too sure Mom cares that much—since she left. Of course, she did come to court with me the time I was arrested for shoplifting; Dad didn't because he was so mad he said he hoped they'd lock me up and he didn't care what happened. But I know he didn't mean that.

Actually, I guess I wouldn't mind it if I didn't have to decide. I'd like it best if Mom and Dad could get back together. Mom's a lot nicer than Winnie Canyon.

Jason St. Clair

/s/Jason St. Clair

DOCUMENT NO. 3
Affidavit of Brenda St. Clair

I am Brenda St. Clair. I love my children, and I want to have custody of them. I never wanted to leave them with Basil, but I just couldn't take his drinking and yelling, at me and the kids. I just had to get out of there even without Jason and Edward. I did not want the boys to be scarred by our constant fights, brought on by Basil's terrible temper, which always was worse after he'd had a few drinks after work.

I did not want to sign the separation agreement, but I was under great mental stress at the time. Basil threatened not to let me visit the boys if I didn't sign. In fact, I'm still afraid that, even if I were to get custody, he might kidnap Jason and Edward and take them to another state.

Jason is rightfully my son by my first marriage, and he's only Basil's by adoption. I know that Jason loves me and would choose to live with me if he could. But poor Jason's been terrified of Basil in the last year, and particularly since the shoplifting incident when Basil beat Jason after I brought the child back from the police station. Jason would not have been in trouble that time if Basil were any kind of good parent. Basil was off somewhere with that woman he's living with, Winnie Canyon, and he didn't even know who was taking care of the kids.

My boyfriend, Bert, is just great with the children. He's particularly patient with Edward, and he knows sign language and is teaching me to communicate with Edward. He's a very gentle, caring person. He's an artist and we enjoy many cultural events together. Bert would give the boys the kind of affection they'll never get from Basil. I plan to marry Bert as soon as the divorce is final.

Brenda St. Clair

s/Brenda St. Clair

DOCUMENT NO. 4
Affidavit of Arthur Baxter

(Witness for the Defense)

My name is Arthur Baxter. I am Jason St. Clair's gym teacher at Anytown Junior High.

I know both Jason and Basil pretty well. This whole divorce business has been very hard on Jason. His attention span in class has become very short. His behavior is disruptive, which it never was before Brenda left. What concerns me more, though, is the rough treatment Basil is giving him. I know Basil through the weekly meeting of area coaches and gym teachers. Basil has a reputation for being a real hard-driving coach. His practices are very strenuous for high school players. What worries me is the fact that he makes Jason practice with his high school team. Jason isn't old enough, and he certainly doesn't have the physical stamina for that kind of workout. Naturally, Jason drops out of the workout when he gets tired, and then Basil gives him a hard time. I've seen it once or twice when I've stopped by the high school field to watch the team practice. Basil will yell stuff at Jason in front of the high school boys like, "Do you want to grow up to be a wimp like your mother's sissy friend Bert?" That's a miserable way to treat a twelve-year-old.

Brenda St. Clair is a lovely woman and a good mother. Until she was forced to leave her home, she devoted herself entirely to those boys. A few times, Jason has told me that he really misses her and wishes she would come back. Even though he says he wants to stay with Basil, I think he'd be better off going with Brenda.

Arthur Baxter

s/Arthur Baxter

DOCUMENT NO. 5
Separation Agreement

This agreement, made this 10th day of October, 1981, is between Basil St. Clair (Husband) and Brenda St. Clair (Wife). We agree as follows:

1. Edward St. Clair and Jason St. Clair shall both remain in the custody of the Husband.
2. In order to provide the best possible place for the boys to grow up, Edward and Jason, along with the Husband, will continue to live in the family home.
3. With the permission of the Husband, the Wife may visit the two boys at the family home or at the Wife's residence.
4. It is the intention of the Husband and the Wife not to live together and to seek a complete divorce as soon as possible.
5. The Wife agrees not to use any of the Husband's credit in buying items for her use.
6. These conditions should be included in the divorce decree.
7. Husband and Wife have voluntarily entered into this agreement. There was no unnecessary pressure on either party to sign this document.

Basil St. Clair, Husband

Brenda St. Clair, Wife

Mock Trial: Floyd v. Baldwin (A Consumer Home Repair Case)

Edited by:

Patricia McGuire, Esquire
Georgetown University Law Center

With assistance from:

Edward L. O'Brien
Lee Arbetman
Vivian H. Mills
Andrew Pannell

A Publication of the National Institute
for Citizen Education in the Law

Copyright © 1984 National Institute for Citizen Education in the Law, Washington, D.C.

The purchaser of this copy is hereby authorized to reproduce indicated material for nonprofit educational use. Reproduction for sale is prohibited.

Published and distributed by Social Studies School Service, 10200 Jefferson Boulevard, Culver City, California 90232

MOCK TRIAL: Floyd v. Baldwin
(Consumer: Home Repair)

A contract is a legally enforceable promise, made by two or more people, to perform certain actions in exchange for something of value. For example, when two people purchase train tickets, they enter into a contract with the railroad: the railroad promises to take them to a certain destination in exchange for their money. Similarly, an employee agrees to perform certain kinds of work in exchange for certain compensation (usually money, but sometimes other kinds of benefits such as food and lodging as well). When a merchant delivers furniture after a customer agrees to make payments over a period of time, that, too, is a contract. While the "action" part of a contract might be anything from singing in an opera to painting a house, the "something of value" is most often measured in dollars and cents.

When one party to a contract breaks his or her promise by failing to perform the work or failing to pay the bill, the other party tries to find a way to force the first party to live up to the terms of the contract, i.e., to "enforce" the contract. The person seeking to enforce a contract might try phone calls, letters, face-to-face negotiation, help from private and public consumer agencies, a mediation service or even the news media. If despite reasonable efforts the person who wants to enforce the contract finds that the person who broke the contract still refuses to live up to the promise, the next step could be to go to court.

If a large amount of money is not involved, such a claim might be brought in a local small claims court. This can sometimes be done without a lawyer. If it is a larger claim such as in this case, then a lawyer must usually be hired and the claim filed in the state's civil court.

In a case involving a contract, a judge is faced with a number of questions:

1) Does a contract exist? To be legally enforceable, a contract must have several parts: an *offer* (e.g., a salesperson says "for $300.00 this TV can be yours"); an *acceptance* (e.g., a customer agrees to purchase the television); and *mutual agreement* (e.g., the store representative and the customer agree on the terms of the television purchase). In addition, *consideration* must exist, which means that something of value (the customer's money) is being exchanged for something of value (the television).
2) Was the contract broken?
3) Was the contract fairly entered into (in the eyes of the law)?
4) Is the contract legal? (E.g., contracts involving illegal acts such as selling drugs are not enforceable.)
5) Should the contract be enforced? Or should the parties be allowed to get out of the contract?

Superior Court of Anytown
Civil Division

Georgia FLOYD, plaintiff, individually and as grandparent of minor Nelson Floyd	)	
v.	)	MT. No. 1002
Sam BALDWIN and FIX-IT HOME REMODELING, INC., defendants	)	

Statement of Facts of the Case

All of the parties agree to the following facts:

On April 22 last year, Mrs. Georgia Floyd signed a contract with Sam Baldwin, president of the Fix-it Home Remodeling Company. The contract is attached. The contract called for the construction of a new back porch for Mrs. Floyd's house. The price was $2,500.00.

On August 29, the Fix-it Home Remodeling Company began the construction of Mrs. Floyd's porch. The work was begun by Ms. Shelly Smith, a union master carpenter. Two days later, Ms. Smith was replaced by Mr. Lawrence Warsley. Mr. Warsley completed the job in two days.

On September 9, Mrs. Floyd's grandson Nelson Floyd and his friend Phil Russell were on the new porch. An argument broke out, and some scuffling ensued. Nelson fell against the porch railing, the railing tore loose from its anchor in the porch post, and Nelson fell to the cement patio below. Nelson suffered a broken shin bone, broken ribs, a concussion, cuts, bruises, and a black eye.

Mrs. Floyd has filed a civil suit in the Superior Court of Anytown against Mr. Baldwin and his company. In her complaint, Mrs. Floyd alleges:

1) That Sam Baldwin breached his contract with her by failing to furnish "quality material, experienced workmen, and quality service" as specified in the contract.
2) That a newly-installed porch railing of ordinary quality should not have broken under the circumstances, and thus that Baldwin breached an implied warranty.
3) That Nelson's injuries were caused by Baldwin's negligence, and thus that Baldwin is liable to pay for the injuries.

BEST COPY AVAILABLE

Accordingly, Mrs. Floyd's suit seeks damages in the amount of $14,140.00, including:

1) Return of the $2,500.00 cost of the porch.
2) Payment for hospital bills totalling $1,640.00.
3) Ten thousand dollars for Nelson's and Mrs. Floyd's pain and suffering resulting from Baldwin's negligence.

In his answer, Sam Baldwin states:

1) That he performed the contract properly, according to all of its specifications.
2) That all warranties were contained in the contract, and that no implied warranty exists in regard to home repair.
3) That Nelson's own actions caused his injuries as well as the damage to the porch, and that Baldwin was not negligent and should not be found liable for the injuries.

Statement of the Law

The legislature of State of Anywhere has not passed any particular law on the subject of home repair. However, the law in the state has been set by court cases following these principles:

1) Contracts: the usual rules of contract interpretation (offer, acceptance, mutual agreement, consideration) apply in this case.
2) Warranties: In a recent case involving a television set that broke beyond repair only two months after it was purchased, the Court of Appeals of the state held "... common sense tells us that a $400.00 television should not break down so completely only two months after it was purchased. Even though the seller made no express warranties about the quality of his product, we must find that a warranty was implied, guaranteeing that this television would last the usual lifespan of a $400.00 television set, which is surely longer than two months ..."
3) Contractor's Negligence: Negligence requires showing that (1) a duty was owed to the person, (2) that duty was not fulfilled and (3) the failure to fulfill the duty caused the injury and resulting damages.

Ten years ago the Court of Appeals in the State of Anywhere ruled on the following case: Mr. X was a passenger in a car driven by Ms. Y. Ms. Y had just picked up her car from the Readi-Ratchet brake shop, where she had a $200.00 brake job, including new brake shoes front and back, new hoses, drums turned, and a variety of other work. As Ms. Y approached a red light with Mr. X as her passenger, the brakes failed, and Ms. Y's car entered the intersection where it was struck by another car. Mr. X suffered severe injuries, and later sued the Readi-Ratchet brake shop, claiming that the brake job had been negligently performed. Readi-Ratchet claimed it only owed a duty of care to Ms. Y, not to Mr. X. Rejecting Readi-Ratchet's claim, the Court of Appeals said, "... a contractor may be held liable for injuries to third parties when those injuries are a reasonably foreseeable result of the contractor's negligence ..."

Parties and Witnesses

GEORGIA FLOYD, plaintiff **Age: 75** **Occupation:** Retired
1274 Harrison Street

FRED MASON, witness for the plaintiff **Age: 42** **Occupation:** Master Carpenter
511 Walnut Lane

SAM BALDWIN, defendant **Age: 37**
613 Chestnut Street **Occupation:** President, Fix-it Home Remodeling Co.

MYRNA CLARK, witness for the defendant **Age: 63** **Occupation:** Retired
1276 Harrison Street

Documentary Evidence

1. Affidavit of Georgia Floyd
2. Affidavit of Fred Mason
3. Affidavit of Sam Baldwin
4. Affidavit of Myrna Clark
5. Contract between Georgia Floyd and Sam Baldwin

DOCUMENT NO. 1
Affidavit of Georgia Floyd

My name is Georgia Floyd. I am the plaintiff in this case. I have spent the last fifteen years in my home on Harrison Street taking care of my husband who is an invalid, confined to a wheelchair.

I used to be able to take my husband, Frank, for a walk around the block once a day in his wheelchair. But, in the last year, I've found it was just too hard on the both of us to get him up and down the steps. Poor Frank needs some sun and fresh air. We agreed it would be just perfect if we could have a small porch built off our back door, so that Frank and I could sit out there a little each day.

Shortly after we made that decision, I heard an ad on the radio for beautiful redwood porches, installed in just days. I called the number, and made an appointment for Mr. Baldwin to come to our home.

This Baldwin seemed very young, but he was earnest and he promised to do a good job. Frank and I liked the idea of helping out this young man with his new business. Baldwin promised us that he would build a top quality redwood porch, using only the best materials. He also promised to use master carpenters. He said he'd start the work right away, and that if we signed up quickly, we'd get his discount rate of $2,500.00 for the whole job. Frank and I were thrilled, and we signed immediately, giving Baldwin a $500.00 deposit.

BEST COPY AVAILABLE

You can imagine how distressed Frank and I were when we didn't hear from Baldwin again for over a month. We tried calling the number he gave us, but we usually got no answer or an answering service.

Finally, after about two months, a Ms. Smith showed up at our door. She said that Sam Baldwin sent her, that she was a master carpenter, and that she was ready to begin work on our porch. Whoever heard of a woman carpenter? Frank and I were pretty taken aback, but we really were desperate for the porch, so we let her go ahead. We watched her work for the first two days, and she did seem to know what she was doing.

On the third day, a man showed up and told us that he was replacing Ms. Smith as the carpenter on the job. His name was Warsley. He smelled as if he had just fallen into a tub of beer. Frank was so eager to get out into the sunshine, though, that I didn't say anything. Warsley finished the porch in two more days.

Five days after the beginning of the work, Baldwin came around to collect his fee. The porch looked fine, but I thought the railings seemed a little loose. Baldwin inspected them and said they were fine.

I wrote Baldwin a check for the $2,000.00 balance.

Frank and I were happy to have the porch. It seemed perfect for him! Once or twice he mentioned that he thought it felt a little unsteady, but I didn't think much of it.

About a month after the porch was completed, my grandson Nelson and his friend Phil came to spend the day with me and Frank. Nelson is fifteen years old, but he is small for a boy his age and weighs only about 115 pounds. Nelson and Phil were playing around on the porch and got into some silly argument. I looked out the back door to tell them to settle down. Just at that moment, I saw Phil give Nelson a push with both hands — nothing too hard, mind you — and Nelson fell up against the railing. Well, imagine my horror when I saw the entire railing tear loose from the porch post! Nelson fell onto the cement below; it's a miracle he wasn't hurt worse.

DOCUMENT NO. 2
Affidavit of Fred Mason

My name is Fred Mason. I am a carpenter. I have been in the business for forty years, and earned my Master Carpenter's certificate in 1968. I have my own business specializing in home repair.

I have constructed or supervised the construction of about 800 porches during my career. My reputation is well known in this town. I don't know why Mrs. Floyd didn't call me to do this particular job, since we are good friends. She lent me several hundred dollars last year to cover doctor's bills when my wife was ill. I'd have gladly built the porch for Mrs. Floyd.

In my business, I employ ten crews consisting of three men each. Except for special delicate work, I don't employ women because they don't have the strength for this kind of work.

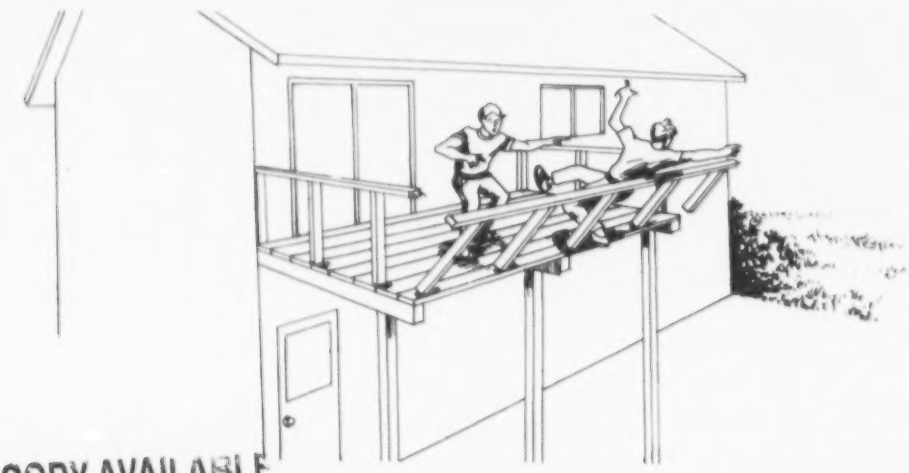
To build a typical porch, like the one Mrs. Floyd wanted, the crew would have included a master carpenter, an apprentice, and a laborer. Together, the three men could construct such a porch in four days, if the weather allowed the cement footings to dry properly. One man alone could never construct a decent porch in four days. Most likely, if one person could do such a job at all, it would take ten or fifteen days of very tedious labor.

For a job comparable to the Floyd's I could not have charged less than $4,000.00 to do it properly. Two thousand-five hundred dollars for such a porch is unheard of; these fly-by-night home construction operations really hurt our entire business by charging such low prices and then delivering such a poor product.

I inspected the porch at 1274 Harrison Street twice: once right after the accident, and once again before this trial. It was clear to me on these inspections that the railings had not been properly secured to the corner posts. Probably that woman they sent out set the railings. The job was very shoddy.

s/Georgia Floyd Georgia Floyd

s/Fred Mason Fred Mason



BEST COPY AVAILABLE

DOCUMENT NO. 3
Affidavit of Sam Baldwin

My name is Sam Baldwin. I am a Master Carpenter. I have been a carpenter for fifteen years, and I received my Master Carpenter's certificate in 1979. In 1980, I opened my own business, the Fix-it Home Remodeling Company.

Since 1980, I have constructed or supervised the construction of about 75 home porches in this town. All of my former customers expressed satisfaction with the results. All of these porches were constructed for normal use, and none has proven defective. Of course, our porches are constructed for "normal use" by adults; unless the customer specifies to the contrary, we do not build porches specifically to withstand destructive adolescent behavior.

The entire agreement between myself and Mrs. Floyd was contained in our written contract. I did send "experienced" carpenters to do the job; I was not under any obligation to send certified Master Carpenters. Despite any of Mrs. Floyd's claims, the contract clearly does not specify the carpenters beyond "experienced."

Mrs. Floyd told me that the porch would be used by herself and her invalid husband. At no time was I led to believe that teenage ruffians would be using the porch as their own boxing ring. Had that been specified, we could have installed special reinforcements; under the circumstances, I was led to believe that normal reinforcements of the railings would be satisfactory.

Mrs. Floyd never liked the fact that I sent a woman out to start the job. Shelly Smith is an excellent carpenter, and well on her way to getting her Master's certificate. At the time she started the job, she was in her sixth month of pregnancy. The day after she started, her doctor ordered her to stop working, so she couldn't continue. The man who finished the job, Lawrence Warsley, is one of my regular carpenters.

When the job was finished, Mrs. Floyd happily paid me the balance of the contract, and everything seemed to be fine. I inspected the porch, and found no problems. She never mentioned any concerns. I was shocked when my attorney contacted me to inform me that I was being sued by Mrs. Floyd.

Sam Baldwin

s/Sam Baldwin

DOCUMENT NO. 4
Affidavit of Myrna Clark

My name is Myrna Clark. I've lived next door to the Floyds for about twenty years. Georgia and Frank used to be good friends with me and my husband Albert. That ended about three years ago when that incorrigible boy Nelson broke my back door window.

Georgia thinks all her grandchildren are angels, particularly Nelson. She's blind to the fact that that boy is a real menace to the neighborhood. Why, just last spring Nelson got into a fight with one of the other boys in the neighborhood, and wound up breaking the poor child's jaw. He's always getting into fights.

I saw the fight between Nelson and that other clown, Phil, the day they broke the porch. They didn't just fall into that railing once. They were having a real shoving match, and I guess both of them shoved the other into the railing three or four times. The last time, right before it broke, I heard a loud creak, like it was about to break. They kept up their fight, not satisfied until they really did some damage.

Myrna Clark

s/Myrna Clark

DOCUMENT NO. 5
Fix-it Home Remodeling Company
*****Contract*****

DATE: April 22, 19--

The Fix-it Home Remodeling Company agrees for the sum of $2,500.00 to construct a porch at the rear of the premises at 1274 Harrison Street. Such premises are owned by Mr. and Mrs. Frank Floyd, contractees.

Said porch shall be constructed of redwood and shall be five (5) feet in width and eight (8) feet in length, and shall stand eight (8) feet off the ground.

Consideration from Frank and Georgia Floyd shall be the sum of $500.00 in advance of the construction, and $2,000.00 upon completion of the project.

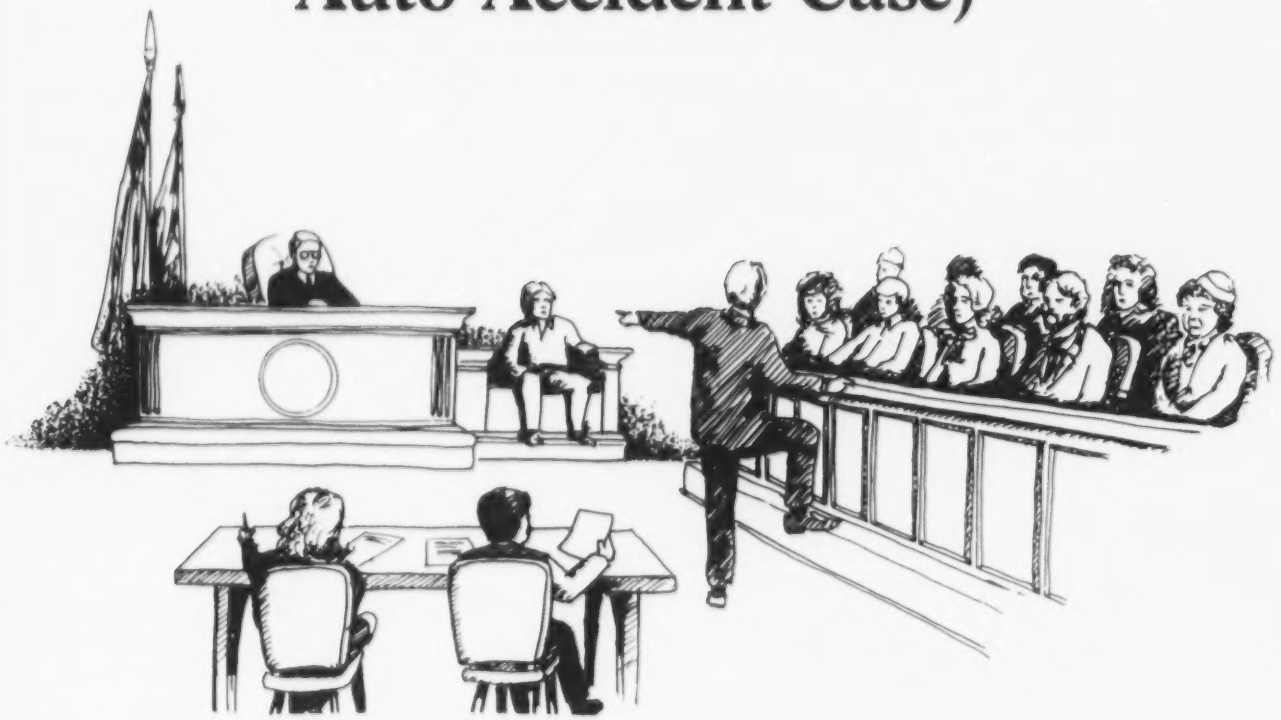
In return for this consideration, Fix-it Home Remodeling Company agrees to furnish quality material, experienced workmen, and quality service.

This writing constitutes the full agreement and understanding of the parties, and no other warranties, express or implied, shall exist outside of this writing.

Sam Baldwin Georgia Floyd

Sam Baldwin Georgia Floyd

Mock Trial: Thomas v. Nomad (Small Claims Court: Auto Accident Case)



Edited by:

Patricia McGuire, Esquire
Georgetown University Law Center

With assistance from:
Edward L. O'Brien
Lee Arbetman
Vivian H. Mills
Andrew Pannell

A Publication of the National Institute for Citizen Education in the Law

Copyright © 1984 National Institute for Citizen Education in the Law, Washington, D.C.

The purchaser of this copy is hereby authorized to reproduce indicated material for nonprofit educational use. Reproduction for sale is prohibited.

Published and distributed by Social Studies School Service, 10200 Jefferson Boulevard, Culver City, California 90232

MOCK TRIAL: Thomas v. Nomad (Small Claims Court: Auto Accident Case)

In most places, there is a civil court frequently called the "Small Claims Court," to which plaintiffs can bring their complaints which can be settled for less than a certain sum of money. (The dollar limit in Small Claims Courts will usually be somewhere between $500.00 and $1,500.00.)

In most Small Claims Courts, the parties may appear without attorneys; in fact, in some states, the parties *must* appear without attorneys. The whole purpose of Small Claims Court is to provide a forum in which to resolve relatively minor legal problems quickly, yet with the full force of a trial-level ruling.

Cases arising out of minor auto accidents frequently appear in Small Claims Court. In such cases, where the damage involves a small sum of money, for a variety of reasons the parties may not want to file claims for the damage with their insurance companies; in some cases, one or both of the parties might be uninsured. For whatever reasons, one of the parties to an auto accident might sue the other in Small Claims Court if the damage is slight enough.

Most automobile accident cases revolve around one important question: which driver was at fault in the accident? To prove that the defendant is at fault, the plaintiff must show, by a preponderance of the evidence, that the defendant was somehow negligent, and that this negligence caused the accident. Negligence means that a person failed to behave with a reasonable amount of care. In a case in which an automobile driver is accused of being negligent, that driver's failure to behave with reasonable care could be demonstrated by evidence that the driver was speeding, driving without headlights, failing to obey traffic signs, or otherwise ignoring the rules of the road and that the defendant's failure to be careful was the cause of harm to the plaintiff.

Sometimes, particularly in cases involving auto accidents, both parties might be at fault. In such a case, while the plaintiff might be able to show that the defendant was negligent, the defendant might similarly be able to prove that the plaintiff was also negligent. In cases in which the plaintiff's negligence might also have helped to cause the accident, the court might find what is called *contributory negligence* on the part of the plaintiff. Depending on the law in the state where the accident occurred, contributory negligence can cause a reduction in the amount of money awarded to the plaintiff, or may result in a decision for the defendant.

Also, in some cases, while one party or both might be proven negligent, it still could be proven that one party could have avoided the accident, on the basis that there was a *last clear chance* to get out of the way which the one party failed to take. In such cases, whatever party is shown to have had the last clear chance to avoid the accident and to have failed to take it will probably lose the case.

Superior Court of Anytown
Small Claims Court

Walker THOMAS, plaintiff	)	
	)	
v.	)	No. MT. 1003
	)	
Sam NOMAD, defendant	)	

Statement of Facts

All of the parties agree to the following facts:

On Saturday, November 13, at approximately 11:45 p.m., a collision occurred between a Dodge Omni and a Ford Escort. The Escort was driven by Walker Thomas. The Omni was driven by Sam Nomad. The accident occurred at the intersection of Independence Avenue and Sixth Street in Anytown, U.S.A.

Walker Thomas was driving northbound on Sixth Street, a one-way street. He had stopped at a red light at the corner of Sixth and Independence. Sam Nomad was approaching the intersection heading east on Independence, also a one-way street. The light as he approached the intersection was yellow. As he approached the intersection, he saw flashing red lights, an ambulance, in his rearview mirror. He pulled to the right toward the southwest corner, and into the intersection. At this same moment, the light for Thomas turned green and he proceeded into the intersection. The two cars collided, and the ambulance sped past.

Mr. Thomas has filed suit against Mr. Nomad in the Small Claims Court of Anytown, which handles claims of $1,000.00 or less.

Statement of the Law

The State of Anytown follows this statement of the doctrine of last clear chance which was made in its Court of Appeals in a prior case:

". . . even if the plaintiff is found to be contributorily negligent, the defendant may be found liable if it is clear from the facts that the plaintiff was unaware of this position, that the defendant was aware of the dangerous situation and could have avoided the accident if he had exercised reasonable care. This doctrine only applies when the defendant has a last clear chance to avoid the accident . . ." *Hadley v. Peerless*, 22 Anywhere 2d 1 (1920).

Parties and Witnesses

WALKER THOMAS, plaintiff **Age: 37** **Occupation:** Plumber
332 Chestnut Street

SYLVIA DRIVER, witness for the plaintiff **Age: 32** **Occupation:** Police Officer
Rm. 301, Municipal Headquarters

SAM NOMAD, defendant **Age: 21** **Occupation:** Student
318 Baxendale Hall
Anyday College

MIKE ROPER, witness for the defendant **Age: 27** **Occupation:** Ambulance Driver
1734 Dominion Street

Documentary Evidence

1. Affidavit of Walker Thomas
2. Affidavit of Sylvia Driver
3. Affidavit of Sam Nomad
4. Affidavit of Mike Roper
5. Police Diagram of Accident

DOCUMENT NO. 1
Affidavit of Walker Thomas

My name is Walker Thomas. I am the plaintiff in this case.

On Saturday, November 13, I took my wife Diana out to dinner. At the time, she was eight months pregnant. I had two or three drinks, and then, because she wasn't feeling too well, we went home and Diana went to bed. About 11:25, Diana said she thought she was in labor, and that we'd better go to the hospital.

I sure was nervous for Diana. We had already lost one baby born prematurely, and we both were desperate to have a healthy baby this time. We rushed into the car and set off for the Anytown hospital, about a ten-minute drive under normal conditions. We left the house about 11:35.

About two minutes away from the hospital, I stopped at the light at the intersection of Independence Avenue and Sixth Street. I was going north on Sixth, a one-way street. When the light on Independence turned yellow, I got ready to go as soon as my light turned green. To my left I could see a small blue car on Independence, but I didn't notice anything unusual.

As soon as the light turned green, I entered the intersection. To my shock, I saw the small blue car start up at the same time and speed right in front of me. I slammed into his right fender. I didn't even notice the ambulance that sped past us.

Fortunately, my wife wasn't hurt. The police came right away, and one of the officers took her to the hospital.

The damage to my car was bad. The whole left side and hood had to be replaced, and I had to get new bushings and a wheel alignment, as well as some other work. The whole bill came to $850.00.

I had never been in an accident before; I never even received a ticket for a moving violation.

Fortunately, our baby was fine.

Walker Thomas

/s/Walker Thomas

DOCUMENT NO. 2
Affidavit of Sylvia Driver

My name is Sylvia Driver. I have been a police officer in Anytown for five years. I was on duty Saturday night, November 13, when a call came through the dispatcher that an ambulance driver witnessed an accident at the corner of Sixth and Independence.

When I arrived at the scene, I found the two vehicles in question blocking the right eastbound lane on Independence, and the left northbound lane on Sixth. After several questions I learned that the car driven by the defendant Nomad (Car A) had been struck on the right front by the car driven by the plaintiff Thomas (Car B). While the cars both sustained fender and hood damage, there were no personal injuries.

The plaintiff's wife was obviously pregnant, and he explained that she was in labor and they were going to the hospital. I called for another squad car to take her to the Hospital Center. I smelled a faint trace of alcohol on the plaintiff's breath, but he did not appear intoxicated, and under the circumstances I decided not to administer a sobriety test.

Nomad told me his story about the ambulance bearing down behind him. He said he had to enter the intersection in order to give the ambulance room to get through.

I visually inspected the intersection from the point of view of both drivers. From the corner of Sixth, headed north, the view down Independence is obstructed by a tree. It's reasonable to believe that Mr. Thomas could not have seen the ambulance coming. On Independence, the street is three lanes wide at the intersection. While parking is allowed within limits, cars are not allowed to park within thirty feet of the edge of the curb. I noticed several cars parked illegally that evening, but there still was room for Mr. Nomad to pull over to the curb to allow the ambulance to pass. For the sake of allowing the ambulance to pass, I did not see any reason why Mr. Nomad had to pull into the intersection.

In my opinion, Mr. Nomad was at fault, and I issued him a ticket for failing to obey the traffic light. In the course of checking his license and registration, I discovered that his license had expired the previous month.

Sylvia Driver

/s/Sylvia Driver

BEST COPY AVAILABLE

DOCUMENT NO. 3
Affidavit of Sam Nomad

My name is Sam Nomad, and I am the defendant in this case. On Saturday, November 13, I was driving eastbound on Independence Avenue on my way to pick up a friend after work. She works at Jack's Jiffy Burgers on South Elm Street. I was a little late, and I was worried that she might be alone in the parking lot waiting for me. Normally, I would not have been driving at all since my license expired last month, but since there was a hold-up at the Burger place a week ago, I insisted on picking Jeanne up after work.

As I approached Sixth Street, I caught sight of flashing lights in my rearview mirror. I speeded up a little to get out of the way; there were cars parked on both sides of the street, and it seemed clear that the ambulance could not pass me. As I got to the intersection, the ambulance was right on my tail. The light was turning yellow, but since there was no room to pull over, I eased out into the intersection.

As I went into the intersection, I saw a small yellow Escort stopped at the red light on Sixth, heading north. Actually, the driver was edging forward, but I thought for sure he'd stop completely when he saw the ambulance. Instead, he roared into the intersection the minute the light turned green for him; that guy must have been sitting on his accelerator. When we got out to inspect the damage, I could smell liquor on his breath.

Sam Nomad

/s Sam Nomad

DOCUMENT NO. 4
Affidavit of Mike Roper

My name is Mike Roper. I have been a driver with the Anytown Rescue Squad for the last five years.

On Saturday, November 13, at approximately 11:45 p.m., we were rushing a heart attack victim to the Anytown General Hospital. I was driving the van eastbound on Independence Avenue. I had my flashers on, but for some reason, the siren on that particular truck failed to work that night.

As we approached Sixth and Independence, I noticed a small blue car about 75 yards ahead. The car was going at a normal rate of speed. It started to move to the right just as I was almost on top of him. There wasn't much room on the street for the car to get out of my way, so he spurted into the intersection, just as the light was turning red. At that same moment, a yellow car heading north on Sixth entered the intersection, and the two collided. We couldn't stop to help, but my partner radioed the Anytown police to report the accident.

I'm glad that the driver in the blue car tried to get out of the way. A lot of drivers don't understand how important it is for emergency vehicles to get through. Our heart attack patient could have died had we been delayed even a few minutes. It's drivers like that guy in the yellow car, people who jump the light and act all impatient, that cause so many accidents.

Mike Roper

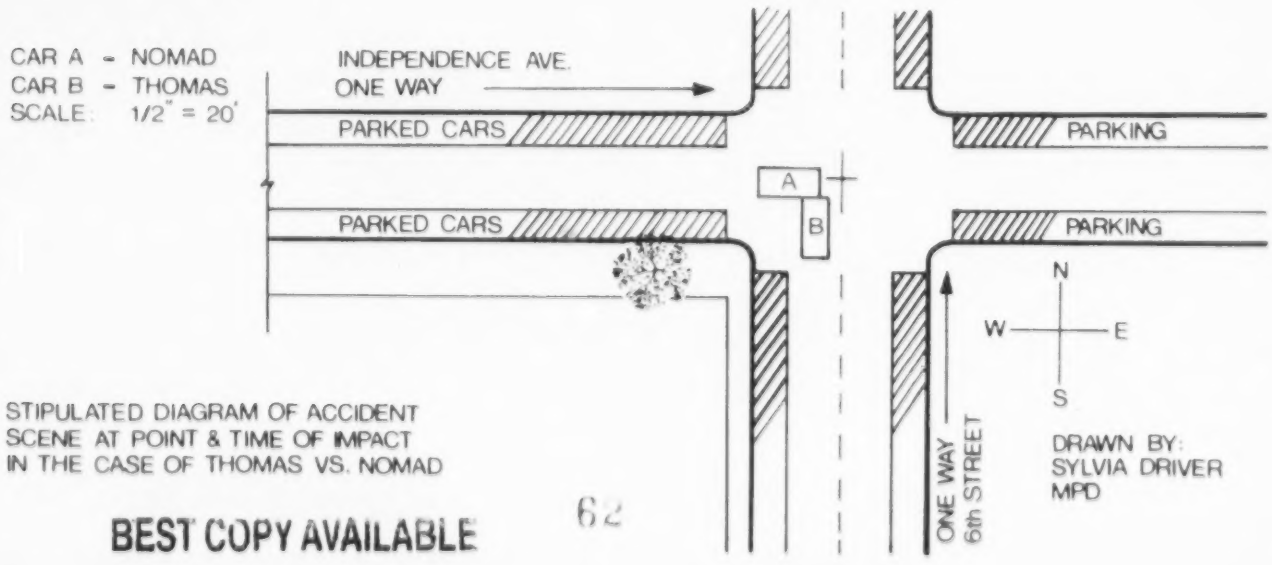
/s Mike Roper

DOCUMENT NO. 5
Police Diagram of Accident

Police Diagram of accident on November 13th.

Agreed to by: Sam Nomad
Walker Thomas

Drawn by:
Sylvia Driver, M.P.D.



STIPULATED DIAGRAM OF ACCIDENT
SCENE AT POINT & TIME OF IMPACT
IN THE CASE OF THOMAS VS. NOMAD

BEST COPY AVAILABLE